3: Hart E-5 (1953-1954)1954 MX3 Rif MX3

mary to arrange a fixed place beforehand for washing and bathing. Each *jamā'ath* (village, council of notables) works out and agrees on fines for infractions of water rights, particularly with regard to freedom of women; a small boy is stationed at a prudent distance from the women's section of the water, to keep men away (4).

It was Col. Blanco, in his magnificent analysis of Riffian customary law (5) (which has served as an invaluable aid to me in the collection of my own notes on the subject), who first called attention to the fact that in the Bay of Alhucemas, the primary ditches have secondary branches which only take up water for twenty-four hours; if there are four such secondary branches, each one only takes up water every four days. Secondary ditches in turn have tertiary branches, which take up water only during the day, or at night. The tertiary branches lead to the very small ditches of individuals, which take up water for a few hours only, these hours usually being determined by those of the daily prayers. Distribution of water is based on the tribal social structure: a *thārfīqth*, the fundamental social unit, receives water from a secondary ditch on a twenty-four hour basis, while a *jājghū* or patrilineal extended family within the *thārfīqth* may use only a tertiary ditch. If one of these family groups, during one turn, gets its water during the day, it will receive it at night in the following round, and the first in one turn will be the last in the next. All ditches are subject to communal maintenance and all the families who use them must help repair them after heavy rains have washed them out.

Water rights are still carefully regulated by the *'urf*, or unwritten customary law, and custom in respect to water channeled off from the Ghīs is different from that of the Nakūr, owing to the different nature of the rivers themselves. In the Bay of Alhucemas, the best land in the tribe, the flow of water in the lower course of the Ghīs, although slight, is nevertheless constant. The problem created by the Ghīs is that although today its volume has been artificially increased with new concrete beds for the primary ditches of Thafadhna, Bulma'īz and Libzimma, there would still not be enough water to go around if

(4) Blanco Izaga, 1939, p. 101.
(5) Blanco Izaga, 1939, passim.

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adequate provisions, sanctioned by custom, for its apportionment had not been made long ago. Because of the relative constancy of its flow, those who irrigate with its waters know that the quantity they can expect is more or less the same at any time of year. Thus the *qānūns* dealing with irrigation in the Lower Ghīs specifically state that any man who purchases land there must buy his irrigation turn independently. Due to the fact that these *qānūns* have been drawn up in Arabic by the *'adūl* or notaries public for all to see and abide by, and to the additional fact that all the land on both banks of the river belongs to Aith Wuryāghil, disturbances of social equilibrium about irrigation water there, although far from uncommon, have been considerably less great than they might have been.

The Nakūr, however, is something else again. Although it irrigates about eight times as much land as the Ghīs, it nevertheless loses much of its potential through infiltration. While in winter I have seen it overflow its banks during a heavy storm, it becomes reduced to a muddy little creek in summer. Owing to its volume capacity, however, its irrigation *qānūns*, in this case unwritten, provide that anyone who buys land there automatically has a right to irrigation water as well, because most of the year there is a sufficient quantity for all. But the hitch is that Nakūr water irrigates not only Aith Wuryāghil but Aith Tuzīn and Tamsamān as well. Although the Spanish administration has fixed the river as the boundary between Aith Tuzīn and Ṭamsamān on the east bank and Aith Wuryāghil on the west, individuals and families from each of these three tribes still own land on the bank opposite them. In the past the river functioned less as a boundary than as a zone of transition, and because of the unclear but traditional and conservative application of customary law, there was ample opportunity for feuds to develop, which they did with great frequency, particularly in summer when the water supply was low. The *shaikh ar-fijjāḥath* (Ar. *shaikh al-fillāḥa*) or *aquwwām* of each of the opposing tribes met to parley in case of a blatant infraction of custom, such as getting water out of turn; he was backed up by his respective constituents, all of whom were armed to the teeth. In case of a general melee, Aith Wuryāghil, being the most powerful, usually won, particularly if Tamsamān and Aith Tuzīn were in disagreement with one another.

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691 newer system on all the tribes in his domain if they did not have it
175 already. Although the *imghāren* loomed large in the early battles
178 of Ighrīben and Anwāl in 1921, their status had become reduced to that of *quyād al-miya* or *quyād al-miyatain* (*qā'ids* of 100 or 200 men) by the time the *Jumhūrīya Rīfīya* or Riffian State was officially created in 1924. Almost all the men in key position in the new government were from Aith Wuryāghīl but *quyād*, *shiyūkh* and *muqaddamīn* took the place of the old *imghāren;* some of the latter fell in with the new regime and became prominent military commanders, while others, like those of the Ghumāra, jealous of 'Abd al-Karīm's success, staged a revolt against him in 1924 and were quietly poisoned or taken off to die in the jails of Ajdīr and Thamāsīnd. By the time 'Abd al-Karīm had conquered the Jibāla and captured his rival Raisūlī in 1925, he was master of all northern Morocco.

692 The natural supplement to this Arabization of the old Riffian
●671 political system was the substitution of the Sharī'a for the earlier
178 customary law. Before 1920, custom, or *'urf*, had been king. If a case had arisen which had previously been unprovided for in Riffian law, the *imghāren* met to discuss it. When they agreed upon a solution, which was usually expressed in terms of payment of such and such a fine, the local *sharīf* or any man whose piety and good sense was known and respected by all was called in to give his testimony and sanction to the law in question, if it did not run counter to the Sharī'a. After the law was passed it was registered by the *ṭulbā* or students in the Friday mosque, and proclaimed in the market by the *barrāḥ* (18). These were the only steps necessary to integrate that law into the corpus of tribal custom. It was, in all but the most serious offenses, as we have seen, the «fifth» or the *farīqath* or even the village rather than tribe collectively which made the law and carried it out.

As has been implied above, 'Abd al-Karīm greatly weakened the power of the *imghāren* by centralizing the political authority in himself as head of a new Muslim state. This state was set up to conform to an orthodox Islamic pattern, and therefore the old customary law had to go. It went, and the result was that the Sharī'a was administered according to the Mālikī rite by a *qāḍī* in each «fifth» of the tribe. The weekly markets, in addition to their earlier functions as

(18) Blanco Izaga, 1939, p. 20.

3: Hart E-5 (1953-1954)1954 MX3 Rif MX3

commercial and governmental centers, became legal temples as well, when separate tribunals were also set up for the *qāḍīs*, their *khalīfas* and their *'adūl*. In the old days there had been *qāḍīs* too, but they operated on a far more informal basis; they held court in their own houses, and, in actual practice, they acted more as arbiters of Berber custom than as administrators of Islamic Law, while, as Blanco remarks (19), the *'adūl* limited themselves to registering acts passed by the customary tribunal. The *imghāren* were the people who counted, and, until 'Abd al-Karīm's time *qā'ids*, *qāḍīs*, *muqaddams* and other functionaries with Arab titles were largely negative concepts in Aith Wuryāghil and in the other tribes of the Central Rīf. Today, of course, the situation has been reversed; there are no more *imghāren*, while customary law operates on the village level alone, and plays second fiddle to the Sharī'a even there.

A political reorientation toward an Arab governmental prototype thus became a mechanism for the preservation of Riffian freedom. But 'Abd al-Karīm's carefully constructed Jumhūrīya Rīfīya was short-lived; it collapsed like a house of cards in 1926, two years after its foundation, when the tribal fastness of Aith Wuryāghil was itself invaded from the north by Spain and from the south by France, at which time the Wuryāghlī commanders in the Jibāla and on the Wargha River rushed back to defend their own homes. Nevertheless, in the framework of 'Abd al-Karīm's Riffian State the Spaniards found a ready-made administrative set-up which has continued, with only minor alterations, to the present day. When the Riffian leader first came to power, he installed *qā'ids* in the *rubū'* of Aith Yūsuf u 'Alī and Aith 'Alī and in the «fifths» of Imrābdhen, Ait Ḥadīfa, Aith 'Abdallāh and Aith Bū 'Ayyāsh. Later on, when the French Army began to push up into the Central Rīf from the south, he added two more caidatos, Turīrth-Thimārzgha and Aith 'Arūs, to tighten up his control over the unruly mountaineers in the southeast part of the tribe. After the war the Spanish administration maintained this chain of command, setting up tribal «intervención» posts in Ajdīr, Thamāsīnd, Aith Ḥadīfa (Sūq ath-Thnain), Aith 'Amar u Sa'īd (Aith Ḥadīfa), Turīrth (Sūq al-Arba'), and Imnūdh (Aith Bū 'Ayyāsh). In 1934, however, they subdivided the tribe into the three aforementioned

(19) Blanco Izaga, 1939, p. 26.

and we feel that it merits translation and interpretation if only for this reason. This is so totally aside from the invaluable insights - some of which are occasional flashes of real brilliance - which it gives us into Rifian social structure and customary law, insights which all become evident in the main body of the work.

There is, too, another, wider reason for the translation of Emilio Blanco which is presented here. Berber social structure may be regarded in Morocco as an unfashionable field of study, and this is particularly true of Berber jural procedure, for, since the country became independent in 1956, its whole population, Arabs and Berbers alike, has come under the sway of Islamic Law. The net result of this, we venture to predict, is that the memory of Berber Common Law will die out entirely with the oldest surviving generation. The details of such law are still clearer among the Berbers of the Central Atlas than among Berbers elsewhere in Morocco, because the French administration was rigorous in its underwriting of such law until 1956 - despite storms of Arab protest over the 1930 "Berber Dahir". Present-day Rifians, even the oldest ones, on the other hand, only tend to remember primary jural principles, such as the number of co-jurors required in a case of suspected murder in the days of the 'Ripublik' - a term which Rifians use retrospectively to refer to the long period of violence, bloodfeud and what we have elsewhere labelled "organized acephaly"[27] which preceded the rise to power of 'Abd al-Krim, and in no way to be confused with the latter's "Rifian Republic" -

27--Cf. D.M. Hart, The Aith Waryaghar of the Moroccan Rif: An Ethnography, to be published.

114 and, most important of all, what happened if a murder occurred in a
●671 market (a place of peaceful commercial exchange, as Blanco points out)
114 on market day (a day of peace, as Blanco again points out). For the
443 clan market, as Blanco makes very clear, set the tone for the relative
182 autonomy of the clan within the framework of the tribe of which it was part; and this was particularly the case amongst the Aith Waryaghar, a fact which Blanco, once again, did not miss. Hence, in his
114 671 682 fine analysis of the 'Qanun of the 'Fraction' of the Aith 'Adhiya' (in LR, pp. 10, 55), Blanco notes, regarding anyone who should commit a murder in the market, that "...all the above-mentioned communities of the Bni 'Adhiya shall unite against him and burn his estate and that of his agnates; they shall drag them from their houses and exact from them one thousand duros as a fine".

114 671 443 182 In his comments on the qanuns of the clans of the Aith Khattab, Aith 'Abdallah and Aith 'Adhiya (all of the Aith Waryaghar), Blanco clearly brings out the fact of the market as the "preferential institution", both economic and social, and as the "temple of tribal law", where the clan councillors or ingharen convened in regular weekly meetings (called agraw) to settle disputes. Thus the jural aspect of the traditional Rifian market. Market day, in the Rif, absolutely had to be the one day of peace during the week, for if the market was "broken" through fighting and murder, the cry went up: "Now there is no law!" (Ur iddji shi r-haqq!) And this phrase, as Blanco graphically says, was "repeated in the humble dwellings perched on the mountain slopes; and soon the Rifian mountains returned to their harsh, restless and agitated life, as the bloody phantasmagoria of vengeance reappeared

114 on the hillsides, bringing the cries of victims and the echo of rifle
67 shots in its train" (LR, p. 19). Blanco's work is shot through with
443 references to the clan (or, as he calls it, fraccion), with its mar-
182 ket, as the basic Rifian patria - which of course applies better to large tribes like the Aith Waryaghar than to small ones like the Thafarsith, "Rifian Switzerlands" surrounded by more powerful neighbors.

114 By 1960, some of the finer points of the Rifian qanuns or Cus-
671 tomary Law documents had been forgotten even by members of the oldest
[668] living generation, e.g., such as how much is to be paid if one shoots at a man and misses him, or if one threatens him with a dagger, but
114 does not stab him. Blanco, and to a lesser extent Carleton Coon[28],
127 have both set down many of these common-law niceties; and Blanco's
[671] work has the additional merit (and we refer here primarily to LR) of being a translation and an analysis of primary documents, some dating as far back as the mid-eighteenth century. These are invaluable source materials for the long and unbroken period of the Rifian 'Ripublik' (as opposed to 'Abd al-Krim's Dawla Jumhuriya Rifiya, or "Rifian Republican State", 1921-1926, although he only constituted it "officially" early in 1923), which is today only a memory and, according to some, a skeleton in the Rifian closet. However, old tribesmen and even some younger ones who are less sophisticated - and who therefore generally make better informants - still grudgingly admit to admiring it and to looking upon it with nostalgia.

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[113] 28--Cf. Carleton S. Coon, Tribes of the Rif, Harvard African Studies, Vol. IX, Cambridge, Mass.: Peabody Museum, 1931. Coon's data on customary law come primarily from the tribe of the Igzinnayen, whereas the bulk of Blanco's come from their northern neighbors, the Aith Waryaghar.

Moreover, even though many jural details of life during the 'Ripublik' have now been forgotten, many attitudes and values of that era, which, as noted, lasted until the advent of 'Abd al-Krim in 1921, are still fully present. The Rifian keeps an iron grip on what belongs to him, and this applies particularly to his womenfolk, who, albeit highly respected, are kept equally secluded and segregated. Also, his land, poor as it may be, is his own and no one else's, in true "territorial imperative" style. But especially with the coming of the protectorate, the values underlying the bloodfeud, which was once the dominant political institution of the society, were channeled into the newer direction of labor migration: in the old days of the 'Ripublik', a man had to kill his enemy to make his mark, while more recently he had to go out and get a job. (Until 1962 and Algerian Independence, work on the farms of French colons in that country was the favored mode and region of labor migration, while since that time the current has shifted to Western Europe.)

The Aith Waryaghar uprising against the Indepent Moroccan Government in 1958-1959 - which was forcibly put down by the new Royal Army in its first post-Independence test of strength - was a graphic indication, at the tribal level, that the old values of Rifian "apartness" within the wider national Moroccan society are still resistant to change, for despite its "modern" objectives, the uprising itself was carried out in a "traditional", "take-to-the-hills" manner. And these same values are even more discernible, today as in Blanco's time, at the level of the jma'th, the local community. Community life among the Aith Waryaghar is both intense and inner-directed, as, for

621
671 example, the qanuns of Lower Thamasind, of Imhawren and the Inter-
114 Lineage Pact of Thazurakhth (all in LR) clearly show. And that such
621 community and inter-community life can also be constructive, as well
421 as vengeance-oriented and destructive, is amply shown by Blanco's truly excellent analysis of Aith Waryaghar irrigation rights, especially with respect to the "intermittent" and intercalated rights of a particular lineage in the Plain of al-Husaima to the water which three other lineages, all of a different clan from the first, traditionally receive from a given irrigation ditch (LR, pp. 115-116).

114 Very much more could be said about the good points in Blanco's overall analysis and output on Rifian social structure, for they outweigh the bad ones, and by far. He never specifically pointed to segmentation as a crucial structural principle, but one can feel that he sensed it. And although he did not recognize the fact that the principles behind the liff system of alliances often, in the Rif, cross-cut those of segmentation, his understanding of liffs per se was certainly sound enough, and was not unduly influenced by Montagne. He did tend to confuse the concept of diya or bloodwealth with the concept of haqq, the fine paid by a murderer to the councillors if he committed his murder in the market, thereby breaking the peace of the market; but although this distinction is crucial, Blanco's treatment of the whole context of facts nonetheless correctly highlights the Rifian keynote of bloodfeud at home and peace abroad. And this last is perhaps the dominant theme in Rifian society and culture.

PART I--MANUSCRIPT DATA ON RIFIAN SOCIOPOLITICAL STRUCTURE

1. STRUCTURAL FEATURES OF RIFIAN SOCIAL ORGANIZATION: ("LECTURE ON RIFIAN CUSTOMARY LAW"), uncompleted MSS., dated December 17-18, 1935.

A) General Introduction (fragmentary):.....The Berber area of Morocco, or Blad s-Siba, is the land of custom or of customary law, as opposed to the Arab area, or Blad l-Makhzin, which is the land of the Shari'a, or of Islamic Law[1].....

1) Berber "virtues" (and Rifian ones) include: a) a zeal for independence; b) a spirit of association (twiza, wuzi'a, dhwara, liff[2]); c) a preference for "democratic" forms of government (councils, "oligarchical" institutions, etc.); and d) a respect for custom[3].

2) A slow descent from the mountains to the plain (what Blanco means here specifically is the relatively rich alluvial Plain of al-Husaima in the lowlands of the tribe of Aith Waryaghar), but without urbanization...There is an indifference to "urban nuclei", which are only visited, and not lived in, except by Europeans. The Rifian's atmosphere is his tribe, and, even more so, his village or local community.

3) The basic French error in passing the Berber dahir of 1930 was in sending a European magistrate to supervise criminal law proceedings in Berber customary tribunals (in the Atlas Mountains only: translator's note), and this satisfied neither Berbers nor Arabs[4].

4) The Rifian embraced Islam and Berberized it in his "practices and superstitions" (my quotation marks: translator), as he

177 Berberizes, among other things, words, and the umbrella[5]...; and when
671 Koranic laws apply to him, he follows them only if they are compli-
777 mentary to his own custom; but, if there is a contradiction, it is custom, and not the Shari'a, which is followed, and followed without question.[6]

181 5) The author's expression of his personal sympathy for the Rifians: men who are "brave, loyal, hard-working, intelligent, modest, honorable, (long-)suffering, and austere."[7]

B) Introduction to Social Structure (fragmentary):

602 1) As an agricultural and warlike people, the social ties of
571 the Rifians are rudimentary[8] and become weaker as the number of individuals associated with them increase: thus, from family to tribe, from village to region, there is a decrease in consistency. Strong in
613 "elemental" groupings like the agnatic lineage or the dharfiqth, which
621 units its members through blood ties[9], they lose rigidity although
619 they are still precise and detailed in the jma'th (or local community)[10], and they become looser and more difficult to recognize in the upper-level groups, the dhaqbitsh[11] and its "fractions"[12], which nevertheless constitute the true "homeland" in North Africa, and are independent units[13].

571 2) The Rifian social organisms (i.e. units) are constituted
(602) by the associations between family (i.e. kin) groups which live together in the same territory, and thus have a localistic stamp which permits their evaluation in this manner. However, the institutions which constitute political groups do not have this character, as they are made up of elastic and complementary forms[14] which...retain

621 today for finding out the volume of a social group is the list of
623 nubath or turns to provide food for the fqih. It is more constant
571 than an enumeration of houses or guns[73] or persons, which is more subject to variation. But it must also be remembered that there are two kinds of turns: those based on hearths, and those based on plows and animals to pull them. In some areas, one type is used, and in
621 others, the other.....The notion, however, of the Friday mosque as
623 a defining and anchoring characteristic of the jma'th is not bad, and
571 as such, it may be compared to the Spanish parish (parroqu'a)--but
794 only in the sense of members of different dharfiqin coming to prayer.
[613] This applies even if the mosque in question serves only as an individual place of prayer for a well-to-do family, and not as a common temple.[74]

623 The etymological definition of jma'th, "meeting, reunion, convocation" is in itself insufficient also, as it is too general.

2) Function of the Jma'th (understood again as council): Economic. It regulates services in common, i.e. use of water, pasture land, ghabth (brushwood) and communal lands, and, by extension, social relations (hospitality, benefits) and spiritual relations (funeral
623 services). Custom which is privately initiated in the kin group now
671 becomes public by acting as a yardstick in such relationships, and it is in the qanuns[75] of the jma'ths where the first rudiments of Rifian
[613] customary law appear. This law is both more elevated and more humane than that of the dharfiqth, which is purely one of reprisal.

621 In most jma'ths, industry and specialization is represented only
623 by a master blacksmith, aside from women who make pottery by hand;
463 on the other hand, in the "fraction" (clan or subclan) these
326 necessities are complemented.
323

000 on the other hand, in the "fraction" (clan or subclan) these necessities are complemented.

621 623 423 The patrimony of the jma'th is made up exclusively of communal lands. The jma'th is thus formed not only by people but by lands. It thus has a territorial significance which the dharfiqth lacks, for it may have immovable property in another tribe[76], and acts committed by its members outside the "municipal terminus" are thus not handled by it exclusively. For this reason there is a need for another 614 621 623 social organ structured in an analogous manner, but of greater importance and more extensive jurisdiction: the "fraction" (i.e. clan or subclan.) This wider grouping, although it also has a localistic significance and a breadth wider than the village or hamlet of isolated homesteads or groups of homesteads that we have seen in the jma'th, has other more sharply defined characteristics. It alone intervenes in inter-jma'th matters, in most cases; for the custom of the jma'th itself is nothing more than inter-family (i.e. inter-lineage) custom.

3) The "fraction" (clan) is an association of neighboring jma'th-s for sociopolitical ends; it is a state in miniature, an independent republic, and the true Rifian patria because it is within the limits of this unit that the Rifian lives out his life; where he finds what he needs, and where his law is made[77].

614 443 [671] The clan has two distinctive features: its law and its market. It is my opinion that places in tribal areas which the natives regard as ancient Christian[78] market sites are nothing but former "clan" markets which are no longer in use and the memory of which has not persisted through time. In the tribes of Aith Waryaghar, Axt Tuzin,

614 latter are an incommensurable force in which both the individual and/or
[619] the group(s) to which he belongs may take refuge...Thus, if the clan
[616] has a geographic character[83], its primary distinguishing features are its customary law, its qanuns and its market (as in the qanun of the Wednesday Market of Sidi Bu 'Afif, which marks the jurisdiction of this market and the men who admit the same and arrange their lives in accordance with it--see La Ley Rifeña, 2a Parte, pp. 59-68).

619 4) Tribe or Dhaqbitsh: The tribe is the highest-level form of
614 clan association (i.e. a tribe is made up by a given number of clans or maximal segments). The function of a tribe, also, has on this
619 level been transformed into that of maintaining interclan equilibrium
614 (i.e. the theory of segmental balance and opposition), which is
671 guided by the same norms as within each clan, and if it actually has
182 no overall customary law common to it as a single unit[84], it nonetheless forces...any of its delinquent members to rectify any errors, faults or mistakes he may make, but always in accordance with the law of his clan. Thus we may observe that, within the tribes, their clans
619 form two balanced and equilibrated lfuf (pl. of liff), or liffs, as
614 the tribes, on their own level, do in turn[85], and as even the dharfiqin
616 of a given jma'th do, two, three or four rungs down the ladder. It
[613] would seem to be these liffs which have always served to watch over
[621] and maintain the continued existence of the "fractions" and tribes,
[623] while at the same time having been responsible for a fierce opposition to penetration of the area on the part of the Makhzin (both Moroccan and Spanish)...If the jma'th is the secondary school of Rifian democracy, the "fraction" is its high school and its tribe the university.

(although not all of them with the same degree of forcefulness. Anyone may speak, although the majority, as elsewhere, are silent. A spontaneous speaker caused the same sensation, stupor and curiosity as those like him in Spain do in the bull-ring, and the result was almost the same. An amqqran or councilmember interrupted him, saying "You here, you have just made the gesture of a stupid idiot," and the poor man, reddened and embarrassed, was silent amid general noise and quarreling, which the ingenious councilmember smilingly recalled in later years.....Another incident: once a man whom I did not know was proposed to me as a candidate for a position of tribal authority, and I wanted to find out about him. I began a series of questions and reflections regarding the virtues which anyone nominated would have to possess, such as honor, ability, etc. I was, however, surprised to find the person to whom I was talking interrupt me, saying quickly, "No, no, no! You think he is like So-and-so?" (And So-and-so was a very short-statured men, as I myself am.) "Not at all, he is thus!" With this the speaker, a big, fat fellow, raised his shoulders up with a graphic gesture, thumping his chest and laughing, saying that nobody could willingly argue about his own authority.

Among Rifians, then, names of tribal functionaries seem literally and faithfully to interpret the idea of the function involved, as amghar and amqqran both convey the idea of "big, adult, old". This is reflected in the qanuns when, in reference to those attending a meeting, prior to inscribing a list of the names of the notables present, those who drew up the qanun in question were very

careful to state that all those at the convocation were the "majors" and the "minors" (los grandes y pequeños)[102] of such and such a place. The written titles or nominations of functionaries, and the pompous Arabic names of qa'id, qadi and mqaddim, with which some men like to adorn their names in order to astonish simpletons and impress strangers, are only of value inside their own houses (author's italics), just as the titles of doctor and coronel formerly were in certain South American republics! In the Rif, there was, in pre-'Abd al-Krim days, no qa'id and no qadi[103]; only imgharen and igrawn, iziddjifen, dharfiqin and turba, the last-mentioned being warlike amanuenses whose fingers are better suited to hilt or trigger than to pen, while the other names are the most definite external indices of the degree of Islamization[104] of those who possess them. We will not speak here of such fantastic personages as the bu-mwarith[105] or the ukil l-ghuyab[106] and other shadowy figures recently created by the Spanish protectoral administration, who will probably soon disappear if not taken proper care of!

6) Resume of Rifian Tribal Functionaries (given even though Rifians tend to confuse them among themselves!):

a) the iziddjifen, "headmen", or representatives of each dharfiqth, constituting the permanent council of the jma'th.

b) the imqqranen, "big ones" (or imgharen, pl. of amghar), the representatives elected by the jma'th (author's italics) for its own prestige, and the delegates of the latter territorial unit in the clan council, whose habitual meeting site was the market, and whose job it was to make the law.

FOOTNOTES:

101 671 114 1--This interpretation of a major sociological conceptualization of Moroccan political history, the dissident Berber tribal area, the area of customary law, as opposed to the Arab area under government control where Muslim law was administered, conforms in all respects to the views of the majority of French observers, who label siba as "anarchy" (which, indeed, it literally means: "anarchy, abandon") and who often overlook the fact that the rural areas of the Blad al-Makhzin were also organized on a tribal basis.

101 671 114 113 648 A later definition by Carleton Coon holds that the Blad al-Makhzin, the land over which the power of the Moroccan Sultans extended, was a "land of order", while the Blad as-Siba, whose inhabitants recognized the Sultan's authority spiritually while denying it temporally, was a "land of insolence" (cf. Carleton S; Coon, Caravan: The Story of the Middle East, New York: Henry Holt, 1951, pp. 295-323). This definition, though linguistically inexact, attains a higher degree of sociological sophistication than the preceding one because of and despite the fact that it pushes the analogy a step further.

More recently, Ernest Gellner has defined siba as"institutionalized dissidence" and "marginal or dissident tribalism" (Saints of the Atlas, London: Weidenfeld and Nicholson, 1969, pp. 2-5), and in a review article of two books by Moroccans who seek to interpret various aspects of their country's history ("The Struggle for Morocco's Past", The Middle East Journal, XV, 1, 1961, pp. 79-90, a review of Abdelaziz Benabdallah, Les Grands Courants de la Civilisation du Maghreb, Rabat 1958, and Mohammed Lahbabi, Le Gouvernement Marocain à l'Aube du XXe Siècle, Rabat 1958), he contrasts the traditional French view of the makhzin-siba dichotomy and a radically reinterpreted view advanced by Lahbabi in which "the same (Gellner's italics) facts, the existence of dissident areas, which were used by the French to illustrate the failure and impotence of Moroccan government are used...to provide the basis for a Consent (hence Anti-Absolutist) Theory of the Moroccan historic constitution." Thus the tribes on the shadowy borderland between the makhzin and siba spheres of influence were presented with a sort of Social Contract situation.

101 196 668 It must be noted that in the Rif the condition known elsewhere as siba was termed Ripublik, and that this not only has nothing to do with 'Abd al-Krim's "Rifian Republican State" (Dawla Jumhuriya Rifiya), but also predates it in time. A primary aim of the 'Rifian Republic", indeed, was to do away with the Ripublik.

181 104 2--Blanco does not define any of these terms at this point; he only does so later, in his MSS. chapter on Family Organization. All of them are loaded, as he hints, with institutional implications, and we propose to give here only thumbnail definitions for the reader's convenience. Twiza (Rifian dhiwiza) is perhaps best translated as "corvée", a group work project, generally organized for one day only, such as reparation of an irrigation ditch by those who use it, or voluntary assistance given by his neighbors to a man building a house, or, indeed, obligatory work of a communal nature (such as road repair) undertaken on behalf of the tribal notables or the government; this last, however, is usually termed rkwarfi (an Arabization and Rifianiza-

181 tion of French corvee), which underscores its mandatory character.
104 Wuzi'a, in Arabic, refers to distribution on a prorata basis; but its Rifian derivative, r-uzi'ath, refers only to the dividing up of the meat of a ritually edible and ritually slaughtered animal, which has just died, and those who share in the division are expected to pay the owner of the animal back at a later date. Dhwara, a purely Rifian word which Blanco mistakenly gives as twala, thinking it, no doubt, an Arabic derivative, is synonymous with Arabic nuba and its Rifian derivative nubth, means "turn" in its widest sense: use of irrigation water in turn by each user; taking of barley to the fiqh or schoolmaster in the local mosque by each nuclear family within the scattered hamlet type of community, so much the Rifian norm in settlement morphology, in turn, etc. etc. (cf. Blanco's own very interesting and elucidating remarks on the Rifian conceptualization of turns in the chapter on Family Organization). And liff is a crucially important intra- or inter-tribal pattern of alliances.

181 3--All words which are rendered in quotations are Blanco's, and in
114 no case does he define what he means by them. It should be noted here that Blanco, as well as the great majority of tribal administrators in French Morocco at the time, was heavily influenced by the thinking of the late Robert Montagne, Les Berberes et le Makhzen dans le Sud du Maroc, Paris: Felix Alcan, 1930--to such an extent, in fact, that many of the "value judgments" which Blanco makes are indirectly those of Montagne. In all fairness to Blanco, however, it should be noted that he takes sharp exception to certain of Montagne's interpretations of Rifian political sociology; and these exceptions are for the most part fully justified.

668 4--Although the famous "Berber Dahir" of 1930 was enforced, of course,
● 671 by the French up until the very end of their protectorate in Morocco
668 in 1956, it never even had a chance in the Spanish Zone. This state of affairs was due not to any special decision-making on the part of the Spanish Protectorate administration (for much of the corps of tribal interventores was in favor of the dahir), but to the Rifian reformer 'Abd al-Krim, who had vigorously suppressed what he considered the most objectionable features of Customary Law in the Rif as early as 1921 or 1922. This was one of the ways, indeed, in which he was able to consolidate his position as leader of the Rifian war effort and as "President of the Rifian Republic", whereas, perhaps paradoxically, it is the pre-'Abd al-Krim era of "organized acephaly", of councillors and bloodfeuds, which is known, perhaps in retrospect as the 'Ripublik', and which is referred to elsewhere in Berber Morocco, and as a permanent condition, as siba. By the term "most objectionable features" we mean to say that he effectively stamped out any and all aspects of Rifian customary law (collective or plural oaths, in particular) which could in any outwardly discernible way be construed as being opposed to "bonafide" Muslim law. Thus, in short, what happened was at the end of the Rifian War in 1926, the Spaniards found that because of 'Abd al-Krim, orthodox Maliki law (for of the four Sunni, or "Orthodox", Islamic legal schools, it is the Maliki which predominates in North Africa) was already functioning in the Rif, even it overlay a solidly Berber jural base; and during their protectorate, though with some misgivings, they merely preserved 'Abd al-Krim's status quo in this respect.

al-Krim's status quo in this respect.

Emilio Blanco, however, often expresses strong reservations about the efficacy of the Shari'a in the Rif, and--like the "Berber sentimentalist" he often betrays himself to be--actually chides the administration (but only in his unpublished work) for not reintroducing customary law to the Rif. Blanco's thoughts on this matter may have never reached the publication stage, but it is easy to see that he was deeply concerned about it. This is again, perhaps, a function of the (almost unconscious) influence of Montagne's Les Berbères et le Makhzen upon his work and thought.

5--The umbrella (Rifian rmdhar) is the hallmark, rain or shine, of any important personage, actual or self-styled, in the Rif. However, why Blanco brought it into this particular context, we have no idea.

6--The divergence between "Islamic Law" and "Custom" in the Rif is, in an overall sense, less noticeable, certainly, than in other Berber-speaking areas of Morocco, especially the Middle and Central Atlas; and, as aforementioned, we have 'Abd al-Krim to thank for the theoretically harmonious equilibrium and, indeed, blend, between the two.

That, in a general way, it is the Shari'a which is followed (more or less) in all matters pertaining to 1) land, 2) marriage, and 3) divorce, while the elusive "Custom" tends to dictate any cases which do not have to do with these conceptualizations, will soon become apparent.

7--For further "value judgments" on this question, see David M. Hart and José R. Erola, "Rifian Morals", in Vergilius Ferm, Ed., Encyclopedia of Morals, New York; Philosophical Library, 1956, pp. 481-490.

8--i.e. by Western standards: another value judgment.

9--The dharfiqth, pl. dharfiqin, is, in the Rif, the patrilineal (and patrilocal) lineage par excellence, and although Blanco translates it as "grupo familiar", I shall refer to it as "lineage" henceforth, in both text and notes. Varying in both membership and depth, it may trace its 'apical" ancestor from, say, four up to as many as eight ascending generations removed from the speaker. Almost never, unless he is a sharif (in Rifian, amrabidh), or descendant of the Prophet Muhammad--whether de facto or de jure is in this case immaterial--and often not even then, can a Rifian trace his ancestry in a step-by-step progression beyond this particular apex, whatever its generational depth. The various lineage branches of the dharfiqth are also conceptualized as such by Rifians, and are called jajgu, pl. ijujga in Aith Waryaghar, and jij, pl. ijajjen in Igzinnayen and Aith 'Ammarth.

10--Jma'th (from Moroccan Arabic jma'a) is the term generally employed to refer to all the people in a given local community. The Rifians do not use it in the sense which it is given in Arabic (as well as that accorded it by the former Spanish administration), that of "council, assembly", a sense which is more restrictive. However, the triliteral root jm' in Arabic, meaning "to come together, congregate, collect, add up", is ultimately permissive of both notions, for from it is also derived the noun jum'a, "Friday", as well as jami', "mosque". One may

000 31--"Abandoning" is hardly the proper term, although we do know of a few cases in which this has actually happened. "Divorcing" is probably what is meant here.

32--The bride price varies considerably, according to the means of the persons involved, and may range from 30,000 francs up to over 100,000 (in 1960).

[671] 33--The Shari'a stipulates that if a husband goes away from home without providing for his wife and does not let her know of his whereabouts within three months, she may then divorce him. In practice, however, this three-month period is usually extended to a year, during which time the wife usually goes back to stay with her parents. She is, however, prohibited from remarrying for three months after divorce; this is to determine whether she is pregnant. If she is, [851] she must wait until her child is born before remarriage; and the child itself reverts to the father.

[114] 34--Here Blanco is in error. Plowing and sowing are invariably done [241] by men, and both operations are carried out by two men simultaneously, the sower preceding the plowman when cereal crops are planted, and following him when beans are planted.

[241] 35--Rifian economics are based primarily on agriculture and secondarily [231] on animal husbandry. Beside these activities, hunting (of rabbits, [224] partridges, etc.) and fishing (only along the Mediterranean coast, [226] and to a very limited extent) are extremely minor pursuits.

[565] 36--Ironwork is carried on entirely by a debased, (largely) endogamous [463] and (largely) propertyless social class of people called imziren (sing. amzir, "blacksmith"), almost all of whom, in the Central Rif, originate from the tribe of the Axt Tuzin, which produces a number of other low-class social groups (in particular, imdhiyazen, musicians who play and sing at weddings and who also double as mule-breeders), all economic specialists, as well.

[178] 37--Women used to weave rugs on upright looms, and even jillabas (the [294] national garment of the Moroccan male, a woollen cloak with sleeves [286] and hood) on horizontal looms, but men have now, for at least the last 40 years, done all jillaba weaving. Sewing (jillaba seams, located in the front of the garment) is done entirely by tulba, or Koranic students.

[114] 38--Except for chickens and eggs, which are the exclusive property of women. However, again, Blanco's statement, interesting in that it comes from a Spaniard, seems a bit dogmatic and extreme.

[443] 39--In the Aith Waryaghar, women were expressly forbidden from attending markets under any circumstances, and even now only old ones, poor ones and loose ones show up on market day. However, in the same tribe, there are five women's markets (and one in the Thimsaman) to which men [114] are equally expressly forbidden. With the segregation of the sexes as pronounced as it is in the Rif, it is very difficult for a male anthropologist to find out (in other than the most general and roundabout way) what goes on at women's markets!

000 40--Adultery in the Rif is almost always punished by the death of both the guilty parties, if caught in flagrante delictu. This, at any rate, is the procedure which is most favored culturally, and even if the Moroccan Government attaches a six-month or a year's jail sentence to it, many Rifians follow this path of action in such a case.

41--Ar-raqba, literally "neck" in Arabic, is the term used by the Algerian Kabyles to designate blood-vengeance. The Rifians use another Arabic word, l-'adawa, Rifianized to r'adhawth, meaning "hatred, hostility".

[114] 42--Dhwara is synonymous with nubth, and here Blanco is again in
[233] error, for, in the Central Rif, taking goats to pasture is neither
[851] a communal activity, nor is it done in turn by each small boy or girl in the community, but by the children of each nuclear family on their or its own account.

[114] 43--Blanco's phrase is Es, pues, una sociedad turnante, and this
[196] notion, in my opinion, is one of its author's most significant contributions to the study of Rifian social organization. With respect to Blanco's definition of nubth, it should be stated that the lexical meaning of the word is "turn", but that in the Rif it refers to
[651] a nuclear family, or that of a widow with unmarried children. The most significant function of the nubth in a wider sense, perhaps, is that the annual tirtib tax, calculated on the basis of ownership of animals and crop-yield, worked out on this basis in each village community in a tribe. It should here be noted that the tirtib tax was officially abolished in Morocco in the summer of 1961.

[144] 44--It is maintained by both Rifians and Berbers in the Central Atlas
[671] that a man may have an unlimited number of wives at the same time provided that every fifth one is a negress. Not only is this fact considered to be sanctioned by the Shari'a, but I actually knew one Rifian qa'id (now deceased) who had 4 ordinary Rifian wives and a fifth one who was black.

[171] 45--Both widow inheritance (wife marries deceased husband's brother) and the sororate (husband marries deceased wife's sister) are standard practice in the Rif, as well as elsewhere in the Muslim world (see Coon, 1931, op. cit., and E. D. Chapple & C. S. Coon, Principles of Anthropology, New York: Holt, 1942). An outstanding example of widow inheritance is furnished by a woman I know (an informant's mother, to be exact) in the highlands of Aith Waryaghar, who married two brothers in succession (the first was killed in a bloodfeud and the second during the Rifian War of 1921-26) before finally marrying a third brother (the informant's father) and having five children by him!

[881] 46--Puberty rites, in the proper sense of the term, do not exist for
[171] either sex in the Muslim Middle East. That a boy or girl is old enough to fast during Ramadan is a tacit sign that puberty has commenced. In the Rif, at this time, boys help their fathers in the fields and girls help their mothers in the house; it is only children of pre-puberty age, of either sex, who pasture goats.

5: Blanco Izaga G-4,5 (1914-1945) 1975 MX3 Rif MX3
Aith Waryaghar

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J) Note on the Rifian Jma'th (Noticia sobre la Yemáa)

N.B. Undated MSS., probably written 1934-1936, Catalogue No. M1/ñ, Sección Africa, National Library, Madrid.

"An old, confused and nostalgic tribal memory of which so many people are unaware, although they all utilize it and nobody expects it. How does it work, and how can it best be reactivated?"

Organs and Functions:

621 613 1) The jma'th is the association of several lineages (grupos familiares) or dharfiqin toward social ends and objectives. It constitutes the elementary unit of Rifian social structure.[1]

[671] 2) It is personified in the iziddjifen, the headmen of these lineage-groups and their authentic representatives, zealous guardians of Custom (qa'ida), which is often codified into written qanuns established during an agraw or council-meeting.

3) It is visibly manifested in the mosque, the local community and the lands which belong to it, all of which give rise to a spatial discontinuity and elastic boundaries, the origin of not a few quarrels.

4) Objectives: to regulate the coexistence of these (lineage) groups, to watch over them and to administrate their common patrimony.

5) Obligations: these were to attend to communal services and property (prayer,...education, hospitality, external relations, harka, prestations, collective responsibility and distribution of property, lands, irrigation, spoils of war, and fines), with the exception, in theory, of anything relating to personal and possessory status (marriage, inheritance).

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[594] [114] 1--The elementary social unit, in the Rif as elsewhere, is the elementary or nuclear family, and hence Blanco is here, again, in error. A more easily defensible argument might have been a consideration of the jma'th as a kind of elementary political unit.

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9) The Community Charter: The principal function of the iziddjifen, among the many that fell to them, was to establish the norms of coexistence, the laws by which they had to regulate their social relations, the qanun or the haqq, as they call it, and to which we may refer as the community charter, which comes to be its equivalent.

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This charter, whose archetypes, of a strong rudimentary beauty, I published in the year (not given: translator's note)[6], show very clearly its formative processes; and the matters which are codified are only those which it is convenient to recall periodically to the group as a whole for whatever the reason needed (neglect, modification or innovation), but not the only rules to be obeyed, for those admitted by Custom and followed in good faith, because of their applicability and convenience for the whole neighborhood, were not written down, as they were known to all and sundry. Thus, codifying them for the knowledge and satisfaction of outsiders would have been a waste of time.

The characteristics of these documents or agreements, which many people see only as simple lists of fines, can be resumed as follows: the drafting of the documents by the tulba, and the specification of the place concerned; those who attend; the reasons for the meeting and what is decided at it, i.e. transgressions, crimes and their penalties and sanctions; to whom this applies; the period of time that the agreement is to be in force; the individuals upon whom its fulfillment is incumbent; the neutral and prestigious personage who acts as mediator; and the saint or amrabit whose protection they invoke and under whose shadow they seek shelter.

6--The reference here is probably to La Ley Rifeña, 1939.

671 If aside from local community questions such as irrigation, hospitality and matters dealing with education, these community charters also deal with "crimes of blood" (delitos de sangre), one may see in them, more than the incumbency of these units (organisms), the necessity of providing for the lack of other upper-level associations which were lacking in this organized anarchy, which, in a happy phrase, may be attributed to those days when social disintegration attenuated the functioning of the upper-level units: clan (fracción) and tribe.

621 623 627 10) Security: Internally, security was guaranteed in normal times by the iziddjifen themselves, through the resolution of any incidents and the clearing up of any disputes which might arise, while in the internal political struggle of its council the popular spirit predominated. This was even more the case when within the council the 623 613 621 equilibrium between dharfiqin or agnatic lineages was broken and one lineage came to predominate, as now it was one of its representatives who, in the last analysis, came to achieve the delegation of the permanent executive function of security, under the pompous and strange designation of mqaddim or shaikh[7], who, satisfying his own personal vanity, brought about the envy of the iziddjifen, who were very jealous of their own prerogatives, who were paid in their jobs (sic)[8], and who were opposed to the notion of personal power for which the [671] struggle now began. In this respect the qanun of the jma'th of (Lower) Thamasind (Aith Waryaghar) is of interest.[9]

7--Again Blanco reveals an anti-Arab and a pro-Rifian bias, perhaps: he would obviously have preferred the designation amghar. However, and more to the point: he is also equally aware of the superfluity of such titles in a society as fiercely egalitarian as that of the Rifian tribes.

[114] 8--This was hardly the case: no tribal leaders (to say nothing of mere lineage headmen) in pre-Protectorate Morocco were ever paid in the formal sense of the word. Remuneration came through occasional "perks".

9--Cf. La Ley Rifeña, 1939, Chapter V.

000 2. LEGAL DECISION PROCEDURE:

(Most of this section is made up of the Introduction, in manuscript form and unpublished, to La Ley Rifeña, 2a Parte--Los Cánones Rifeños Comentados, Ceuta: Imprenta Imperio, 1939)

671 A) Characteristics: (fragmentary):

1) Sources of Customary Law:

a) Voluntary Pacts: agreements or conventions which individuals or kin groups establish among themselves, in writing, toward the attainment of specific ends.

b) Qanuns: tariffs or enumerations of fines for various infractions established by the various social units.

c) Local Custom: in effect, the "national" feeling of equity which may ultimately become fused and intertwined with religious law.

B) Berber Justice, with a Hypothesis on the Survival of Custom: (fragmentary):

671 177 I think it ridiculous of the Spanish administration in Morocco not to have kept the Rif from contamination by the Shari'a (Muslim religious law), which the French in their zone of Morocco and in Algeria have been able to do, among Berber populations existing in these areas[1]. ...I think that Spain, ultimately, has Arabized the Rifians through an ignorance of customary law[2].

[124] In April 1939, the late Si Hammadi nd-Hajj Sh'aib, of the local community of Zawith n-Sidi Yusif, of the clan of the Imrabdhen in the tribe of the Aith Waryaghar, told me: "The Shari'a did not intervene

671 177 124 in or interfere with our qanuns" (which I have already published) "because this had been so agreed previously. At that time, during the 'Ripublik', it only had jurisdiction over matters pertaining to land, marriage and divorce. In the clan of Sidi Yusif (i.e. Imrabdhen), there was always a qadi; but he only had to do with matters relating to property, marriages, divorces and other related items."

671 177 In my opinion, the survival of custom is clear, and it continues to be so today; and not through any lack of knowledge of Muslim law, either. What I do wonder is whether the Shari'a in the Rif is becoming Berberized, or whether custom is becoming Arabized, which is not the same thing.[3]

C) The Survival of Custom: An Explanation:

The Rifians were not and are not in the least unaware of the existence of the Shari'a, but there are reasons why they have in so many ways become estranged from it and have applied customary or common law, transmitted by tradition and revealed in not a few cases by written documents, through which they have tried many times to establish and to codify it.

A major factor here was the material impossibility, in which the Rifians found themselves, of applying Koranic precepts, owing to the constant state of revolt of the area, even though (author's italics) [175] these were reconcilable with custom...Also, we can by no means assume that throughout the recorded history of the Rif there were no men qualified to interpret the Shari'a, particularly in cities such as Badis and Nakur.[4]

671 To what, then, can we attribute the persistence of custom, to

671 which the Rifians are deeply attached, and their attempts to codify it, in spite of Islamic law?...We are faced with the hypothesis that in times past their conversion to Islam was not complete, a situation analogous to that prevailing in other Berber-speaking regions. Louis Milliot in 1926 pointed to the survival of Kabyle qanuns in Algeria[5], but in the Rif this is neither the only nor the principal factor, as there was no long period of peace in the Rif, and the lack of this experience gave the Spanish administration the option of recognizing an "area of custom", which in the French Zone was the main reason for the Berber Dahir of 1930.[6]

In the Rif, the main reason for the non-application of Islamic law would seem to lie not so much in the degree of Rifian Islamization but rather in the constant state of revolt of the area, which would have rendered regular and dilatory (sic!) Muslim legal procedure inefficient or inefficacious. The basic question was far more one of the impotence of the Rifians themselves in the face of this problem, rather than one of their incompetence. Under these circumstances, we may imagine that fqih-s, tulba and other religious personnel were forced, in order not to die of hunger, to limit themselves to making amulets and charms for women and to writing up and registering the decisions of the imqqranen, "the Big Ones", the ones who counted. For the same reason, shurfa and imrabdhen were unable to do anything else except resolve conflicts and dictate sentences, which were up to the parties concerned to accept or not, as they wanted. Where, then, could one have found a qadi who, conscious of his duty and a disinterested judge of Muslim law,

was capable of facing the wrath of the members of a dharfiqth who thought themselves to have been wronged in a legal decision and who were now blocking his path?

The Rif is an area of warrior tulba; and the "poetry" of the Rifian Maghrib would have dealt with the firing of shots during the course of a feud or raqba[7] and the blood of victims whose bodies fall into canyons and gorges after sunset; for the qanun of the Tuesday market (now defunct) of the Aith 'Abd Allah clan establishes the validity of the agreement in question from the hours of dawn until dusk, on market day, after which time everyone shelters himself and his animals inside his house as fast as he can; and a guard is mounted with a rifle. The daily and weekly truce is over[7a]. And even in Spanish times, after the pacification, there is the story of the qadi who did not dare to return home unless accompanied by a pair of armed mkhazni-s[8], who represented the protection of the Makhzin in its most elementary form. And in the mahkama (tribunal building of qa'id or qadi), more than one qadi has been intimidated by exasperated litigants! If such things have happened during Spanish times, threats made during the "Republik" must have been far worse--"I'll hang you from a tree, mmis nj-haram!" or "I wonder what you'd look like without a head, mmis n-dhit!"[9]

As I see it, the Rifian follows the Shari'a in all instances in which customary law cannot help him, either because it has been forgotten or because in such and such a case it is no longer applied. As he is both a practical man and a believer, there is no reason for the Rifian to deny himself the advantages of the Shari'a, but when, instead of these, he encounters a situation which is prejudicial to him (such as

671 [177] the Muslim ruling on inheritance by women), he finds it more convenient to bypass the Shari'a and invoke custom; for he will always find the means to allay any spiritual lack of scruples he might feel through coating his action with a veneer of pious intent (such as what is in effect a habus in favor of men) or of humanitarianism (such as asylum to divorced women, widow inheritance or sororate[10]), at the same time while he satisfies atavistic impulses.

671 114 It is very difficult to make any sort of rigorous comparison between the Shari'a and Rifian custom, owing to the great lack of data and documents dealing with the latter.[11] I might cite a few notes collected by del Nido[12], and some material of Sidi Ahmad bin Muhammad ar-Rhuni, former Minister of Justice and Chief Qadi of the Spanish Zone; but, then again, I am very doubtful that ar-Rhuni's material refers to the tribes of the Rif--certainly none of his documents are Rifian[13].

671 428 562 171 In matters of inheritance, Rifian custom elevates the condition of women more than the Shari'a does, by matching them with men and therefore by distributing the inheritance in equal parts instead of giving women only one-third (sic); but this is only in theory, and has to do with movable property[14]; in houses and in land, women, in fact, 671 428 562 get nothing. The basis of this distinction is not at all a capricious one, but obeys to the letter the strong Rifian idea which conceptualizes women as minors in age. For this reason they are given, within the house, such work and responsibility as do not require masculine effort or personnel, a fact which becomes apparent if one studies family organization. Work in the fields is a masculine occupation, as is

671 428 562 housebuilding, although here women help, in return for male protection. Women are disregarded here, for in these aspects of movable property, to the formation of which, in the last analysis, they have not ultimately contributed, they receive nothing. On the other hand, in such work as befits their sex, nothing is denied them (even including cereals, for they contribute to the harvest by reaping grain with a sickle and transporting it, on their backs, to the threshing floor.) This notion is linked with the manner of acquiring property through inheritance, purchase or even through force (i.e. blood vengeance)[15]. Property gained in any other way is illegitimate, and as men are the ones who gain it, they have no reason to divide ir or share it with women.

114 113 D) Points Regarding Arabic Work on Anti-Sunna Traits (fragmentary):

I hereby review a work in Arabic by Muhammad bin 'Ali bin Brahim Aqibli Amshali al-Susi[16], dated 1342 A.H. (1923-4 A.D.), and published by al-Fatimi ibn Muhammad al-Shagadi. In this work the author exhorts 114 798 Berbers to give up practices which are irreverent and contrary to the sunna, the Custom of the Prophet, and lists those which are to be condemned, as follows:

798 796 1) Irreverent Customs at the 'Ashura:[17] Carnivals. The author rejects all forms of bonfires, of costume and of representation, i.e. imitating animals, birds, old men and old women, as well as the use of obscene words and the wearing of transparent clothes. I have myself seen all this practiced in the Rif[18]. Regarding the use of bonfires, it seems that in the Rif they are lit up to smoke the trees as a possible disinfectant[19].

695 696 623 At other times they decide to submit the resolution to the clan council on the next market day; but when the judgment, which is both swift and free of charge, has been rendered, the individual responsible can only comply with the council's decision; and he must do so not only more than rapidly, but virtually explosively, or be sentenced by his neighbors and his peers. If he resists, his only recourse is to take up arms, as everybody else is now after him, and this in itself obliges him to do so. The proceedings are rapid and gratuitous, as aforestated, except if experts are called upon to intervene; they are given an honorarium, the amount of which is determined by the custom of the tribe in question, and consists of such and such a percentage of the value of the appraised object or the object of the litigation[32].

692 695 Thus, true jural procedure, for the Rifian, is to render public any offense or injury he has suffered, and to gain adherents to his point of view. First his family or kin group wants to intervene on his behalf, then his social grouping (properly: his lineage), and finally his liff, his last recourse. This multiplies the various contingencies and unsuspected turns the case may take ad infinitum, and tends to render useless any reclamations against an offender who is more powerful than the injured party. The latter may not take any action against him, but will often afterwards wait in ambush for him in order to redress the wrong! It is a procedure which.....awakens manliness and courage.....

[671] [613] A good example of the executive procedure in criminal law is the qanun between dharfiqin[33].

000 Bshara, or procedure of recuperation[34]. (No text here whatsoever: translator's note.)

695 F) Oaths (fragmentary):[35]

In most cases, it is not the plaintiff who must prove his pretensions or denunciations, but the accused, who has to justify himself if the complaint is false. There are cases in which the accused has [562] no defense, such as offenses against women, in which the notion of the latter as minors comes into play. If the accusation of a women against her assailant is sufficient to punish the latter[36], where does one find more protection for the woman? Perhaps the rigor in these matters and 695 839 the fear of accusation by jealous husbands or fear of reprisals have permitted to a certain extent crimes such as rape[36a] A etc., which, if not frequent, are nonetheless common enough to have a sanction imposed upon them in defense of the common moral standard.

695 [691] [191] Means of Proof: Testimonies differ from those admitted by the Shari'a. In most cases testimony is invalid unless five members of the accused man's family (i.e. his agnates) are present to swear. They are 695 623 previously selected by him, but the jma'th, who know very well the men constitute its membership, can refuse to admit any of them that it wants [613] to[37]. In serious cases, ten members of the dharfiqth of the accused are required to take oath; they are, however, not chosen by the defendant himself, but by the jma'th, among (translator's italics) the members of his dharfiqth[38].

695 829 181 Thus, if oaths are permitted as means of proof, the number of cojurors varies according to the gravity of the offense; this provides a greater guarantee and shows in yet another way that Rifian society is not individual, but solid and familial; in its concept of collective responsibility, blame or sanctions attach to the group rather than to

A [This footnote was not included in the notes at the end of this section, p. 229--Analyst]

681 H) Sanctions: Further Notes (fragmentary):

1) Punishment: fine, exile, or death of person responsible, whether an individual or a family group[55].

[671] 2) Gradation: variable, according to stipulations in the various qanuns[56]. Rifian law recognizes the same degree of responsibility in [672] his accomplices as in the man who actually committed the crime, by assimilating them with his kin group[57].

681 613 [511] 3) Victim: receives no indemnity, except through what he or his kinsmen get as their share of the fine, which is equitably distributed among all the representatives of the dharfiqin[58], thus appearing more than anything else as a payment for services rendered; and the dharfiqin heads divided it up in the same way among their constituent nubath[59]. Thus, if the Rifian is encumbered with the responsibility of executive power[60] (all are obliged to stand against an aggressor), he still participates in the benefits of such power in a true popular sovereignty, and he never cedes his rights or duties.

000 4) Role of Jma'th in Application of Custom: to influence matters or conceal them, by money, force or politicking behind the scenes. Agrau or assembly of the aitarba'in; assessors and arbiters (tulba, shurfa and imrabdhen); role of liffs (aid to their liff-mates in payment of fines, etc.) (This subsection is completely fragmentary.)

682 683 In summation, three kinds of offenses were punished:

1) murder and woundings, with corresponding fines, and vengeance;

683 684 2) abuse of women (if voluntary on their part, each party had to pay 50 duros, and if it was purely and simply rape, the guilty man paid 50 duros);

685 3) theft, with corresponding fines, and even one of the thief's kinsmen putting out his eyes[61].

673 671 If there are certain crimes, known to all and carrying with them sanctions also known to all, which do not (translator's italics) appear in the qanuns (such as bestiality[52A], etc.), they are kept out purposely because of the shame, the hashuma, of those who formulate the decrees. In other instances (such as certain misdemeanors having to do with agriculture and fields), they are kept out because their inclusion is difficult and they are also sufficiently well known to and by all concerned so that they do not need to be put in. In still other cases, they are kept out because they are questions of custom which require consultation with men of laws or arbiters. Finally, these are all misdemeanors the nature of which, in one way or another, is inadequate to be put before the public in special announcements by market criers.

I) Miscellaneous Data on Fines for Lesser Offenses:

1) Among the Ibuqquyen:

224 a) Hunting[63]: Saturday is the day for hunting (rayāh or [689] thingimarth)[64]. Whoever does not attend pays a 5-peseta fine[65], and altercations during hunting are punished by a fine or by giving a meal to the other hunters. Animals killed do not belong to the man who kills [685] them but to the man who finds them[66]. Damages to cultivated lands are paid for by those who caused them. If it is not known who was responsible, the fine is divided up among all the hunters[67]. Any birds or eggs which are found by one of the hunters during the hunt are divided up [425] amongst them all. Any other objects found which are obviously lost articles of a third party are returned to their owners.

A [This should read "62" not "52"--Analyst]

223 Nests and young birds are not respected, and are taken just as adults are.

224 In the mountains (Jbil) of the Aith Waryaghar, when a hunter (anigmar, pl. inigmarn) going over snow follows the tracks of an animal to a thicket or cave, he walks around it, leaving his footprints and making a circle in order to show that it is his property and that he will explore it on his return. Any other hunter or party respects this. Any animal which falls within the radius of action of the weapon used[68] is the property of whoever killed it.

671 684 b) Personal Law: If a woman accuses someone of dishonest abuse to her person, her testimony is admitted....A woman who is illegally pregnant pays 50 duros from her own property as a fine. If she was forced against her will, and the man who forced her appears, he pays. If she submitted to him willingly, he and she each pay 25 duros[69]. If she has no property, her brothers or male agnates pay[70].

685 695 c) Fine for Theft inside a House: 50 duros. If there is no proof, five adult and trustworthy agnates of the accused must swear to his innocence[71], at least if they have publicly announced in the market not to make themselves jointly liable.

688 793 d) Whoever fails to provide food for the fqih when his turn comes up to do so must pay 2 pesetas[72].

685 231 e) A herdboy who has animals stolen from him while in dhwara[73] must pay for them if he has not seen them stolen. The same holds true for injuries which the animals might suffer....Whoever does not pasture the animals of his jma'th when his turn comes up pays 2 pesetas and one loaf of bread, and has to give a meal to the person who does it for him, or to the jma'th if no one does so.

661 and made him pasture the few goats he had. The jma'th or its mqaddim needed money, and so one day they called him up and fined him 65 duros, accusing his mother of incest and saying that if he did not pay up, they would tell the rest of the tribe and it would cost him more. The boy ran away, out of shame.

428 429 685 d) Muhammad Hmidu n 'Abd Allah of Aith Finathen, on the death of his father, was brought up by his grandmother, and when she died, by his cousins, who periodically fed and clothed him in return for his acting as a goatherd for them. They kept and divided up his inheritance in land from his father, and did not give it back to him, in spite of the constant excitement of the qa'id over the matter[76].

J. Responsibility:

672 [671] Collective responsibility as reflected in the qanuns is an amplification of responsibility to one's kin group and even...to the same social ties as those of other tribes (sic)[77]; this forces one's fellow tribesmen to comply with the duty of rectifying an injury or damage caused by one of their own people. It is an instinctive and necessary means of defense, and is done so that crimes will not go unpunished. This is all a consequence of the rudimentary social organization of the Rifians, of the difficulty of inquiry, of the lack of repressive organs[78] and of impartial and dispassionate individuals, such as judges. When independent states multiply and the extension of each one of them diminishes, such factors as the above make extradition (sic) more difficult and impunity more easy; and, for this reason, a group attribute is the obligation to educate (i.e. enculturate) and answer for its components. Thus, when the group publicly claims that

672 it will not answer for the individual, it remains exempt from the responsibilities and aspersions which might fall upon it....A freedom or state of tranquillity (i.e. truce or even peace) which the group could thus regain at such a high price as the public denial of one of its members was only undertaken when there was good reason for doing so (i.e. when a group feared the very certain reprisals of powerful families) and when the inconveniences were greater than the advantages.

Thus it is not the individual alone who is responsible for his acts; for his family, then his jma'th and in the last analysis his tribe will back him up. There is always someone responsible for [681] every crime. He never remains unpunished, nor does the penalty imposed [671] upon him lapse, even after many years. Rifian law is not charitable and it does not beg. It punishes, but it does not pardon; it exacts, but it does not implore. Thus there is an individual responsibility with a complementary and collective one behind it.

672 671 Does this responsibility, then, extend equally to all those who participate in a reprehensible act? No. There is, furthermore, the group (author's italics) exception already mentioned, when a group, by public announcement, rejects what could happen to it in the course of a punishable action committed by one of its members, attenuated by considerations of minority (i.e. if committed by a child or a woman), physical abnormality (if committed by a crazy person or an idiot), origin (if committed by a stranger), day or even hour of commission (see the qanun of the Aith 'Abd Allah, La Ley Rifeña, pp. 45-51), and it is exaggerated if committed at night (as in the qanun of Thmasind, La Ley Rifeña, pp. 37-44), by a stranger or infidel. There is also

671 [672] an exemption for homicide in defense of one's property (as in the qanun of Lower Thmasind).

It is not possible to think of a minute dosification of laws of great instability which were usually worked out as a response to a pressing need at a pressing time and which would in turn be negated or destroyed through the rise of new chiefs. For this reason, an isolated and superficial examination of the qanuns says little and induces error. They are not simple and incomplete tabulations of fines. Rather, they are the codification of Rifian custom, graphically worked out only for variable matters and not for permanent ones, such as personal law with its concomitant regulations regarding inheritance, etc. They are rules of coexistence which were formulated as events demanded, and not (translator's italics) with long-term ends in view. But even though they are embryonic, they are useful.

The qanun of the Aith 'Abd Allah distinguishes between doers and accomplices[79].

FOOTNOTES:

000 1--With varying degrees of success, most so in the Middle and Central Atlas, and least so in the Sus and Anti-Atlas. The inclusion of the Algerian Kabyles and Shawdya of the Auras in this connection invites other problems.

[114] 2--Blanco is mistaken here, for the Arabization of the Rif was the work not of Spain but of 'Abd al-Krim; and in view of this paramount fact, his plea for a return to a hypothetical state of "pure customary law", however eloquently expressed it may be, seems passe and academic.

3--Hardly. In any case, this is a more difficult and delicate problem than meets the eye, although even on an a priori basis it seems reasonably safe to assume that the Arabization of custom is the commoner of the two phenomena. However, for a documented example of Berberization of the Shari'a, see S. Biarnay, "Un Cas de Regression vers la Coutume Berbère chez une Tribu Arabe: Wadras", Archives Berbères, vol. I, no. 4, 1916, pp. 219-229. Wadras is an Arabic-speaking tribe, but one of indisputably Berber origin, in the Northwestern Jbala, between Tangier and Tetuan.

671 4--Most of the existing accounts of the political history of these 177 cities, insofar as it is known, are based on Ibn Khaldun, Histoire 195 des Berbères, translated by Baron MacGuckin de Slane, 4 vols., Paris 113 1925-56. See E. Michaux-Bellaire, Le Rif, Paris 1925; Coon, op. cit., 1931, pp. 22-36; Andrés Sánchez Pérez, "Datos Historicos Sobre Ciudades Rifeñas", Selección de Conferencias y Trabajos realizados durante el curso de Interventores, 1951-52, Tetuan 1952, pp. 29-47, and, for a synopsis account of Nakur only, Angelo Ghirelli, Pueblos Arabes y Pueblos Arabizados, vol. II--Pueblos Arabizados, Madrid: Instituto de Estudios Africanos, 1957, pp. 142-45. These last accounts have little 175 to add to Ibn Khaldun, although Sánchez Pérez was correctly able to locate the now entirely buried ruins of the city of Nakur within the village limits of Aith Bu Qiyadhen, subclan of Aith 'Adhiya within the clan territory of Aith Bu 'Ayyash in the tribe of Aith Waryaghar, on the west bank of the Nakur River some 25 km. from Alhucemas. This is [113] confirmed by a subsequent report of Ahmed el Mekinasi, in Tamuda, Año VII, Semestre II, 1959, pp. 156-8.

The city of Nakur, in fact, has the distinction of housing the first Muslim dynasty (even though on a local level only) in Morocco, as it was founded in 726 A.D. by an Arab from the Yemen, Salih ibn Mansur al-Himyari. Despite being sacked on two separate occasions (once by Norman pirates in 859-60, and again in 929-30 by Musa ibn Abi l-'Afya), Salih's descendants continued to hold, govern and rebuild the city aided and abetted by the Umayyads in Spain, until a complete sacking by the Almoravid sultan Yusuf ibn Tashfint in 1084 ended its career forever. Between this point and the end of the 19th century, the history of the Rif is an almost complete blank, and the chances of any documentary material in Arabic turning up to bridge the gap in any way are remote.

[131] Two points of general interest, however, emerge from ibn Khaldun's material (which dates from the 14th century and is in turn largely

000 10--Blanco does not, in fact, employ the terms "levirate" and "sororate", and here I confess to having taken liberties with the text; but his meaning is abundantly clear. To readers who want refresher definitions, levirate refers to the practice of a man marrying the widow of his brother (as Coon has pointed out, in the Rif this is usually a junior levirate, meaning that the brother who does the marrying is genereally a younger brother), while sororate refers to the practice of a man marrying his deceased wife's sister.

[128]

[113] 11--This is indeed true, and the only published work thus far specifically dealing with any aspect or aspects of Rifian custom, aside from Blanco's own La Ley Rifeña, is José Maria Peniagua, "Notas Sobre el Derecho Consuetudinario de la Propiedad en el Rif", Archivos del Instituto de Estudios Africanos, no. 4, Madrid 1948, pp. 7-44 and ditto, La Prescripción y el Retracto en el Derecho Consuetudinario Rifeño, Madrid: Instituto de Estudios Africanos, 1950. Paniagua's work, particularly the last-mentioned monograph, deals with problems which seem to be almost entirely constructs of a European legal mind, and have no basis in social reality; and such work cannot be considered serious contributions to the study of Berber jural systems.

12--We cannot identify the work to which Blanco refers here.

13--The only work of Sidi Ahmad ar-Rhuni which we know is the Spanish translation of his Historia de Tetuan, Tetuan: Instituto General Franco, 1955, and this contains no allusions whatever, even remote ones, to Rifian custom.

671 428 191 114 562 14--This is not so. Under Shari'a regulations, women receive one-half of what men receive, in inheritance, and this is the case for both movable and real property. Granted, of course, that the point in the Rif is largely theoretical and that women in fact, as Blanco points out, generally get nothing (particularly insofar as real property is concerned), it still seems appropriate to correct this error. In any case, we have never heard of any customary variation of normal Shari'a usage, which would allot to women one-third of movable property; and neither have any of my informants. It is one-half in theory, and, as a rule, nothing in practice.

671 428 191 562 Besides the current practice of a woman's father or brothers appropriating, in effect, her share of the patrimony on her marriage (in order to keep it in family hands and to keep in-laws out), there is a second institution which reinforces the notion that women do not inherit. If a man dies leaving only his widow and a daughter or daughters (no sons), his r-waratha (sing. awrith) or remaining agnates stand to inherit, which they would not do even if he had only one son. According to Shari'a regulations, the man's widow gets one-eighth, and then, if he has only one daughter, the rest of the property is divided in half, the daughter getting one-half and the r-waratha getting the other. If, on the other hand, he has more than one daughter, the rest of the property is divided up into three parts, the daughters getting one and the r-waratha getting one. However, even if there is a son or not, certain r-waratha (e.g. mmis n 'azizi, pl. dharwa n 'azizi, father's brother's son), but not others (e.g. uma, pl. aithma, brother, and

671 'azizi, pl. aith 'azizi, father's brother), marry the daughter or
428 daughters in question. The result is, of course, that if they do so,
191 they wind up with the daughters' share in any case. However, although
562 father's brother's daughter marriage does occur in the Rif, it is not
the rule, and this is because the institution of shuf 'ath (called
shafa'a by Berbers in the Central Atlas, and referring to agnates prior-
ity rights over both land and women, especially fathers' brothers'
daughters) in the Rif applies to land only and not to women. Indeed,
(992) there is no single form of preferential marriage, and most people be-
lieve in marrying "further away" than their parallel cousins. As, on
the other hand, parallel cousin marriage is the norm in the Central
Atlas, the same institution there (where r-waratha are termed imkusa)
is more effective in depriving women of their share than it is in the
Rif, where conditions per se in the latter area are considerably less
favorable to such deprivation. The crux of the matter, perhaps, is
this: that the property of a man who leaves no sons, despite what
other heirs or offspring he may have, is always divided up among these
heirs (and here, in practice, is where daughters tend to be left in
the cold, even though informants invariably say that they get their
part), while on the other hand, if there is a single surviving son,
no matter if he is a tiny baby, the patrimony stays pro indiviso.

000 15--What Blanco seems to be getting at here is that men rather than
women inherit and purchase property, or acquire it by right of con-
quest, and that therefore property and its administration rests ex-
clusively in male hands. The contrast is effective, because such
movable property which is involved in the work and everyday tasks of
women (i.e. pottery, chickens, eggs, etc.) does belong to them, and
is not touched by men. Men, for example, may perfectly easily sell
chickens or eggs in the market, and they often do so; but they in-
variably turn the proceeds over to their wives, who have stayed away
from the market as good women should (although they may go to the
women's market two days later) and because of this have asked their
husbands to do these things for them.

16--From his name, a Berber himself, possibly from the Sus (as his
final sobriquet would suggest), but more likely from the Ilimshan
subclan of the southern Ait 'Atta, the so-called 'Iqibliyen" of the
southern slope of the Central Atlas. These facts are indicated in the
first and second point-of-origin designations Aqibli Amshali, the
last mentioned probably being a metathesis of Alimshi, an Arabized
singular form of Ilimshan.

17--The 'ashura refers to the 10th day of the first month of the Muslim
year, Muharram (itself called l-'Ashur in Morocco), and commemorates
the martyrdom of the Prophet's two grandsons, Hasan and Husayn. It is
also, in Morocco, the day when almsgiving (zakah or 'ashur) to the poor
is legally enjoined; this act is, indeed, along with the profession of
faith (Ashhadu an la ilaha illa 'llah wa Muhammad al-rasuluY'llah,
"I testify that there is no god but God and Muhammad is the Messenger
of God"), prayer five times a day, fasting during the month of Ramadan,
and the pilgrimage to Mecca, one of the five arkan al-din, "pillars of
religion", or qawa'id al-Islam, "customs of Islam".

681 A murderer in the Rif had to stay in exile until such time as his
682 victim's family would consent to accept bloodmoney, and this generally
696 meant at least one or two years, by which time their desire to kill
him might have cooled down. If they were eventually persuaded to accept
[782] this sum, the murderer's own agnates, at home, went to them and, in the
presence of a holy man, sacrificed a goat to them. After the goat was
eaten, the terms of the ddiyith were discussed and arrived at; and only
after it was paid could the murderer return home. Furthermore, if he
682 had committed his crime on a market path or in the market itself, on
443 market day, as aforementioned, he had to pay an entirely different sum
[114] (which Blanco often confuses with the ddiyith), the rhaqq or market fine
(called r-insaf in the Eastern Rif), consisting of 1000 duros for murder
on a path leading to the market and 2000 duros for a murder or any other
offense grave enough to upset the peace of the market, in the market
itself. This fine was only levied on market day, and payable to the
imgharen of the market. (If a murder was committed away from a market
path or from the market on a day other than market day, there was no
question of fine-paying, which was instituted purely to keep peace in
the suq.) It could be paid in money and/or in kind, and it usually
meant that the murderer had to sell the bulk of his property to raise
the necessary sum, which he handed over at the same time as he did the
ddiyith; but if he could not or would not pay it (and it was a sum
which was prohibitively high), the imgharen descended on him in a body
and burned his house, trees and fields. In addition, many people re-
682 fused to accept the ddiyith, which meant permanent exile for the mur-
628 derer. The imgharen, however, could not touch his property as long as
he was in exile; though he was expected to pay in full if his victim's
family relented and let him return. However, a murderer whose opinion
of himself was so elevated (and there were many such in the Rif) that
he refused to flee, refused to pay the ddiyith to the dead man's ag-
nates and (perhaps worst of all) refused to pay the rhaqq to the
imgharen could expect no mercy; he was attacked by the enraged kinsmen
of his victim and by the council members whose authority he had flouted,
as well--and the feud was on. His own agnates, under these circum-
stances, if they helped him (as they always did) could also expect to
have their own houses and property burnt to cinders.

681 56--There was some variation for minor offenses, but the fines for
682 murder, always with the same careful stipulation of time and place of
commission (market path or market on market day) were absolutely stan-
dard throughout the Central Rifian area.

[671] 57--There is some disagreement on this question. In the qanun of the
[114] Aith 'Abd Allah, cited by Blanco in La Ley Rifeña (p. 47), it is ex-
pressly stated that if two people commit a murder on a path leading
to the market, each of them is fined 1000 duros. Our own informants,
[124] however, stated that the number of people participating in a murder is
immaterial; what counts is the number of dead, each one of whom is
[628] assessed at either 1000 or 2000 duros, always according to where the
murder took place, a head. In the same way, after a feud is over and
a truce has been arranged, the number of dead on each side are counted
up, and the side with the greater number receives excess ddiyith from

684 554 203 626 74--In the Aith Waryaghar, anyone who indulged in bestiality became the object of extreme derision; and as a market crier himself is a person of very low social standing, this in itself would have rubbed more salt in the wound.

000 75--Marriages with parallel cousins occur, but they are uncommon. In this particular instance, there was a good reason for it, as Blanco points out.

76--These cousins, again as indicated in note 17, were the boy's r-waratha, who could normally have inherited only if the boy's father had either died without issue or if he had left a daughter or daughters only. It is un-Qur'anic enough for the r-waratha to appropriate, as [671] they often try to do, a daughter's share of the inheritance as well as their own, but for them to take over a son's share is expressly forbidden by the Shari'a, and may be regarded, in this instance, as the purest personal aggrandizement.

[114] 77--This should probably read "to one's tribe", as the notion of other tribes hardly enters the picture here. Except under an 'Abd al-Krim, how would it have been, or be, possible for a man of the Igzinnayen, for example, to feel any responsibility for a man from the Aith Waryaghar? This error may be due to a typographical error in the original text.

[682] [114] 78--One could hardly label a sanction of 2000 duros for murder committed in a market as indicative of "lack of repressive organs". It is statements of this kind, which continually crop up, that, in conjunction with numerous factual errors, cast a small but ever-present cloud over Blanco's work, and mark him as an amateur ethnologist.

79--See La Ley Rifeña, pp. 47, 50.

121 of the old days which Arab and European writers have either neglected or toned down, if not falsified.

In the comments which the qanuns have suggested to me, I try to explain what they mean to the European reader, justifying the reason behind their precepts.

This, then, is a simple essay, a modest contribution toward a better knowledge of your preferences and virtues, so that those who live together with you in your land can understand you better[1].

114 In other studies in preparation, I shall continue the study of your fundamental institutions, economy and art, which are nonetheless interesting and worthy of publication even if they are modest.

124 My thanks are due to so many Rifians, over long and agreeable periods of time, who with courtesy and patience stimulated my curiosity and questions and tried to satisfy them, answer them and show me how they worked; and especially to Muhammad n Sh'aib Abuqquy, faithful interpreter of my thought.

The translations were done by the official interpreter D. Juan Gómez Jaén.

● 671 1. THE RIFIAN QANUNS, WITH COMMENTS:

The analysis of the Rifian qanuns, of these little pieces of paper which I give you to peruse, of these tiny sheets in which unaccustomed hands noted down, after bombastic introductions and flattering patronymics taking up three or four lines, offset by praises to the Divinity, a number of striking and rigorous precepts, the proclamation of which in the suq gave them the force and attributes of law; and it is these precepts which show us graphically and without any doubt that the Rif

671 must be considered and was one of the component parts of the Land of Custom, a fact which clarifies for us, at least ostensibly, many of the precepts referred to above.

When a superficial observer, Arab or Christian, believer or heretic (sic) sees in them no more than a simple tariff of fines (for various infractions), to which he attaches no importance, as in his opinion they say nothing because of not being even remotely dressed in the garb of the law, this shows only the narrowness and ethnocentrism of such a man or the lack of knowledge that analogous precepts are still followed in other areas, that they have been made the object of many studies, and that they have revealed not a few (different) social forms, up until the present poorly known and ignored, whose influence in the development of humanity have been very great and which show the latter's essential unity.[2]

But if this same observer, showing curiosity and a critical spirit, knows the preliminary act which originates them; if he is aware of the profound significance which this has; he will then stop to contemplate the efforts of an ancient race to perpetuate itself, of a primitive society to survive; and he will focus his attention upon the transcendence which these acts have in the lives of free peoples, among whom are forged, solemnly proclaimed and voluntarily accepted the law through which they must operate, for their own protection and development; and he would express then the same jubilation that these same good people, these courageous and valiant old farmers who originated them and heard them proclaimed in the shade of large-branched carob trees, secular evergreen oaks or humble and venerated saints' tombs, in front

671 of a compressed crowd which, hooded and silent in a semi-circle, hears its own echo in the voice of one of its constituents calling out to the four winds in a harsh thamazighth accent and with graphic gestures, while the black muzzles of rifles above their heads make the moment more solemn and the silence more impressive and represent the law, a strong, hard and impassioned law, the primitive law of the pastoral (sic) peoples. And if we ourselves might have had the good fortune to be eye-witnesses, perhaps we would have felt the chill of the anathema against our brethren for making them responsible for our acts.

[539] Qanun of the Sub-Clan of the Aith 'Adhiya: ".....all of the above-mentioned villages of the Bni 'Adhiya shall unite against him and burn his estate and that of his brothers; they shall drag them from their houses and exact from them one thousand duros as fine".

671 829 609 Do not ask the Rifians about their qanuns, as they do not like to reveal them; they know them to be modest, they fear that they will not be understood and that they will be considered as a joke; they guard them and conceal them as carefully as the dearest members of their families, as their own tongue, with an understandable atavism; and so strong is the feeling of mistrust that it would be offensive and erroneous to attribute to them an inferiority complex; and if, in circumstantial preservation, you wanted to learn their language, they would invariably try to dissuade you with bitter phrases which they once might have heard, if not from your lips from those of your brother officers; and one does not know whether to think the sad reproach, the instinctive defense of the community or an absurd conviction is 829 the reason[3]. They speak disparagingly of their own language as of

829 their own dwellings, anticipating possible impertinences and discourtesies which, wounding their brittle and easily hurt amour propre, would not be able to reject their ways and customs; but if, at some time, and it would not often happen, their instinctive suspicion and simulated servility and docility are momentarily broken down, a single sentence or even a single word will reveal to you all the power and strength of their race, the pride in their ancestry and the consciousness of their superiority; for it is precisely the Rifian resistance to all innovations and to all submission which is one of their most fundamental characteristics![4] In support of this we may refer to the
177 829 152 case of a qa'id, of an old qa'id of a Rifian tribe, who in the company of others had to attend an official meeting at which protocol compelled
[123] a special dress to be worn. The only indication that I gave him that he had to change his clothes for the officers was an outrage to him, which I noticed on seeing his cheeks turn red. The game was lost and an adequate answer was forthcoming: "Do you think I am a little boy?" The other quyad (pl. of qa'id) intervened, but he paid no attention to them; if they wished, he would do so, if not, he would retire; and that old and dignified mountaineer went out with his clothes unchanged, showing himself in the natural and logical manner of his own protocol and not in that of the others, a manner in which, also, he has all his excellence.

671 If we turn our attention to these qanuns, if, after putting aside our European criteria of judgment, we diligently examine their badly constructed phrases and sentences, if we analyze their meaning with all possible affection and if we really desire to penetrate into the spirit

671 of those who made them, we shall see, increasing rapidly before our astonished eyes as if by magic, the breadth and amplitude of their conceptualization, the extent of their writings and the reason behind their precepts; we shall see in our imagination how these notions recovered all their rigor, all their old flavor, through divesting the words which make them up of the extraneous clothing in which, in such documents, the Arabic transcription disguises them.[5]

It is clear that these qanuns as tariffs of fines are simple, as are the questions which cause them to arise, the means of laying a base for them. Fortunately for Rifian social organization, its most outstanding characteristic is that of being gratis and free of charge, increasing the economy of its institutions lacking in functionaries charged with materializing, distinguishing, entangling, packing, collecting or gossiping.[6]

Thus there are no deceptions. The Rifian qanuns are what they had to be, because of their editors, rifle-carrying tulba whose hands trembled when they clutched reed pens and whose pulses were steady when their guns were in their hands. They have to be so, simple and uncomplicated, because so is the public toward whom they are directed and enforced. They are simple, synthetic, miserable (sic) gleams of primitive law, rudimentary (sic) law, a simple warning to criminals and malefactors which transports us to the beginnings of humanity (sic) and makes us understand better their sad transformation, documentary proofs of history, odds and ends of the history of our brethren, the history of all peoples, the human epic. Surely in order to awaken adventurous souls, those with illusions try to encompass the whole gamut of human

671 wickedness in a few lines; but this is only in appearance, for in the qanuns there only figure those principles which the Rifians want to remember collectively and with some frequency so that they will not be forgotten; but this does not mean to say that these minuscule qanuns were the only rules to which the coexistence and living together of Rifians was adjusted, rules which, it should be said, even though lacking written expression, were nonetheless rigorous, nonetheless observed. The qanuns may be the exponent of the rudimentary law of the Rif, but they are neither the whole of it nor its principal part. The documents to follow are no more than a reflection of the all-embracing power of the iziddjifen.[7]

None of the Rifian jurisconsults is worth the words which he originated and to which he gave birth, and none of the editors who perpetuated them with their foreign writing could dream that one day the qanuns would serve to be profaned by the sinful pens of a foreigner.

How could they retain in their hard minds and infantile (sic) memories....wider codifications or penalties and crimes which would not lend themselves to lamentable confusions of right and wrong, of what is prohibited and what is authorized, of what is principal and what is accessory?

Who can imagine that their law was out of tune with the rude environment in which it grew up and in which it was applied?

These are laws destined to be retained in the memory and not in large law books, pretentiously entangledin European legal terminology.

But if the attraction of the Rifian qanuns, from a European point of view, lies precisely in their simplicity, they then reveal to us and

671 clarify to us the efforts of one of the freest peoples to handle their own affairs and, jealous of their rights in an authentic democracy, to impose notions of conduct upon themselves voluntarily.

671 What could the Aith Waryaghar, as Rifians in that stage of society,
177 have done with a law code on a European style? Just what many of them did: to refuse to understand it, to cry out against seeing themselves obliged to suffer it, to place themselves in Divine hands so as not to awaken involvements in its powerful and intricate meshes and so as not to empty their money bags to fill it with official papers. This would not have been worth anything to them, and a good proof of this is the slight service which their religious code can offer them for their convenience when they see themselves obliged to have recourse to persisting in such improvisations.

671 Here the Rifian qanums remain, unknown or ignored by investigators, so that up to the present (1939), as far as I know, they have not had the honor of seeing themselves reproduced integrally and faithfully; and it does not seem that they have attracted men of laws, whose criticism and science is of another and higher order than the impassioned observations and common and individual interpretation of a
[648] tribal administrator, to them. They would not fail to reap many benefits for us, and the greatest ambition for Spain: the respect and esteem which the efforts of her sons creates by their contribution to the development and improvement of humanity and by the scrupulousness in the fulfillment of her international duties.[8]

5: Blanco Izaga G-4,5 (1914-1945) 1975 MX3 Rif MX3
Aith Waryaghar

2. THE INTER-LINEAGE PACT[9] (AITH WARYAGHAR):

A) Qanun:

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Praise be to God...With the prolongation and extenuation of fire and discord between the sons of the celebrated saint Sidi 'Amar Bu Yawryan al-Yusifi al-Jilmami al-Ghalbzuri[10] of the subsegment (lit. farqa) of the Awlad Ukidar, and of that of the Awlad bin 'Abdallah, with the subsegment of al-'Aziz bin Muhammad, their allies, their partisans among the Awlad Tahir Asrih al-Hishami, their patrilateral cousin the Murabit Sayyid Muhammad bin al-Hajj 'Amar and their brother's sons supporting him, an intercession was initiated between both parties through which they desired to obtain the recompense of God by means of good acts, asking the two parties to incline toward reconciliation, which God qualifies by good work and promises to reward whomsoever puts it into practice; then they decided to initiate it for the space of one year from the present date until the same date of the following year.

In consequence, the first party, composed of the Faqih Muahammad Ashahbar Ukidar, his brothers by his father, his patrilateral cousins the Awlad bin 'Abdallah, such as his brother's son Hammu bin 'Abdallah, etc., appeared for judgment; after this, the second party, consisting of al-'Aziz bin Muhammad, his father's brother Akuh, the patrilateral cousin of both the aforementioned, the Siyyid Muhammad bin al-Hajj 'Amar, his brother's son and those of his party as well as those supporting the aforementioned second party of the subclan of Isrihan, the Awlad Tahir Asrich, such as Muhammad bin 'Aisa bin Tahir and all his patrilateral cousins, also appeared for judgment; they came to

671 628 613 728 [443] [686] agree to the abovementioned truce for one year starting from the present date. All of them appeared for judgment in front of the shiyukh of the Wednesday Market (Suq al-Arba') which exists in the vicinity of Sidi Abu al-'Afif; attendance at this act was completely general, as there also came notables such as the blessed, distinguished and excellent sharif Sidi Ahmad the son of the celebrated saint Sidi Misa'ud, from whose grace God has let us avail ourselves; al-Hajj Haddu bin Tahir al-'Abbasi; the shiyukh of Ajdir; the shiyukh of the Murabitin al-Jilmamiyin; and all in general, each of the parties arranging that in case either of them should break off the aforementioned truce in any way before the stipulated time of one year has elapsed, it shall pay a fine of 2000 duros (i.e. 20 x 100) to the shiyukh.

671 628 613 After responding with their goods and estates to the completed arrangement, it was put into effect in the presence of the aforementioned shiyukh in the latters' shop in the aforementioned market; and it was accepted in full and in good faith, with neither party having the right to retract in either the present or the future, each one of them making itself responsible for the fulfillment of what has been set down and for which only those mentioned here have the responsibility.

(The obligation to) payment (of the fine) and the agreement are both complete, as indicated. (The undersigned witnesses) have testified to the testimonial capacity of everyone concerned, that on this day, in the interior of the aforementioned shop, each person concerned, among those known by sight and name, is of sound mind and memory and thus [805] capable of testifying. On the first Wednesday of Rabi' al-Awwal of the Prophet, in the year 1335 (December 27, 1916).[11]

B) Commentary:

671 182 We have here a curious (sic) type of qanun, which, as we read it, reveals the decomposition which Rifian society had reached, the atomism to which its tribal anarchy led, the imperfection, or rather, the inefficacy, of its laws, the irregular coexistence, the demonstration of its independence.

628 613 728 The disputes between two lineages of the Aith Waryaghar threaten to exterminate them through the chain of blood-vengeance in the face of the indifferent attitude of their constituents, who are habituated to taking justice into their own hands in order to defend their own interests. Two rival groups of equal size attain, in their ferocious and persistent struggle, an equal number of losses, and they reach a stage of weariness, a moment of lassitude happily exploited in order to initiate a treaty of peace (author's italics), which will permit them to build up their resources; and this fact leads them to establish this agreement for one year. Those who will (686) see to it that the truce is kept are the shiyukh, to whose protection they submit and who are interested in the affair because of the inducement of the fine which the group must pay, if within this minimal space of time it contravenes what has been agreed upon in any way (author's italics).

671 613 628 728 554 This society lacks a strong executive power; it looked instinctively toward the web of lineages represented through its shiyukh or old chiefs (sic) (no one should believe that this title represented a step in any framework of governmental or judicial power) for a force which was neutral to its feuds and more powerful than itself, to which

by such a simple and voluntary act it was converted at the same time to an arbiter of incidents and an executor of decisions. The function is not gratuitous as in modern states, for if in the latter the contributor pays indirectly, he does so directly in the Rif. Their covetousness thus awakened, they evidently insured temporarily against feud renewal, but they also stipulated that it would revive the embers of their hatred.

These agreements or inter-lineage truces obeyed a double mechanism originating from the vicious circle in which they were debated. On the one hand they originated a series of regulatory norms of coexistence which, gaining in amplitude of concept and extending their jurisdiction to the generalizing of their advantages and the persistence of their exemplarity, painfully came to gain the adhesion of other nearby and related lineages until they were adopted by larger social and territorial units, including districts or entire tribes; and this situation gave rise to some of those qanuns upon which we will comment further on. On the other hand, they represented the ultimate step to which anarchy led, responding to those most curious periods of their history in which one powerful group, having recourse to violence, broke the truce in defense of its own interests, the official recognition of this fact being given by the imgharen in the suq in the face of general consternation, with the tragic phrase War dha bu r-haqq.[12]

"Now there is no law"[13]: such was the official form of declaring the state of anarchy into which the Rifians so frequently fell, a phrase which obliged them to strengthen their kin group, without dismay and by all means in their power; for a man's kinsmen were his last refuge in case of social accident.

5: Blanco Izaga G-4,5 (1914-1945) 1975 MX3 Rif MX3
Aith Waryaghar

195 181 628 "Now there is no law" was repeated in the humble dwellings perched upon the heights; and soon the Rifian mountains regained their harsh, untranquil and agitated life, the bloody phantasmagoria of vengeance spreading again over the slopes through the cries of victims and the echo of gunshots.

628 613 619 134 But the instinct of self-preservation again prevailed, first with pacts like the above, allying small lineages, and afterwards with pacts which, as will be shown later, forced whole tribes into more or less long pauses, during which they took a breathing spell in their rude and savage struggle for existence, which was complicated to an extraordinary degree by a poor and ungrateful soil.

443 182 The reader will appreciate the importance which the market has in Rifian society, for it is not just a simple place of weekly commerce.....

443 671 182 [648] The market in Rifian society is the preferential institution, the role of which, in my opinion, has today (1939) been partly absorbed by the Office of Native Affairs[14] and by the mahkamas or tribunals where the law can be laughed at much more easily than it can be in the market, under a carob tree in full view of all, the market to which the Rifians are so addicted and about which the qudat (pl. of qadi) are so refractory, the market which is today free of all control, including that of its constituents, the most efficacious control of all.[15]

443 671 That the market, among Rifians, was the temple of law, of Parliament....is proven by the fact that in all markets laws were made through pacts, referenda and proclamations; and these unfortunately lack sanction through official publication. In it public affairs of general

671 [443] interest were discussed; in the suq resolutions of more importance were made by significant individuals, more important than the place which gave them a legal character.

Thus, in order to be valid, agreements and decisions had to conform to the following conditions: 1) agreement of the imgharen[16]; 2) necessity of a witness of exceptional character (a personality of religious significance, known and respected throughout the district); 3) registry by the tulba; and 4) proclamation in the suq. The above seems to be the mechanism of Rifian law.[17]

443 671 614 And in the suq a double character may be seen: place of business and temple of law, the latter more important than the former, because if it were the other way around, each clan would have various market sites and not just one, it seems to us; and furthermore, some clans, by virtue of their commercial topography would have been lacking in markets, which is also not the case.[18] Thus we believe, as stated in the first part of this work[19], that there is a correspondence between the clan as a social unit and the suq; in fact, we may go so far as to say that the former was the real fatherland (patria) of the Rifian, his political unit, a small independent republic, the distinctive feature of which was the suq, the temple of Rifian law.

3. INTER-LINEAGE QANUN,[20] SHOWING EXECUTIVE PROCEDURE (AITH WARYAGHAR):

671 628 613 A) Qanun:

Praise be to God.--Copy taken from the text of a document after legalization, extended for the bearer of some.

[682] Praise be to God.--Upon the reciprocal guarantee (Blanco: note 1) made by Ait 'Aisa, Ait Tzurakhth, Izubu'an, Ait Haddu u Sa'id and

671 628 613 682 Isaghwan[21] with (the) Awlad Siddiq[22], in the Wednesday Market (Suq al-Arba') of Tawrirt, in the presence of their notables (Blanco: note 2), agreeing there (to fulfill what has been pacted among them) that anyone who should kill another by treachery or cunning (Blanco: note 3) shall pay a great fine, the amount of which (may) be as high as 4000 duros. This was also agreed to in their Saturday Market (Suq al-Sabt) in front of the notaries of both parties.

On the betrayal and killing (Blanco: note 4) by the above-mentioned Awlad Siddiq of Shu'aib bin al-Hajj 'Amar, the notables of both the abovementioned markets, accompanied by the rest of the people, went to their villages to look for them, camping there until the latter paid (Blanco: note 6), although they (e.g. the Awlad Siddiq) had agreed to this in their presence and in their abovementioned market (when the agreement took place) with respect to the fine expressed above (Blanco: note 7). Upon not finding any solution which would save them except that of handing over to them all their lands, both in the mountains and in Ait 'Aisa, their houses and their documents (Blanco: note 8), with which they remained free of the pressure which the notables and the rest of the people exercised over them (they opted for surrender).

[792] Then, everything which they handed over was valued at 1300 duros (Blanco: note 9) and after the estimate was made, the notables of both markets, including (Blanco: note 10) the sharif Sidi Ahmad bin Sidi al-Hajj Misa'ud[23], al-Hajj bin al-Hajj Am'awsh al-Tawrirti, 'Allal bin Haddu bin al-Hashimi u l-Fari (of the Axt Tuzin), Haddu bin Muhammad Amzyan al-Bu Khalafi[24], al-Talib al-Bukhamad al-Yunusi, Tuhami bin

671 al-Faqir Siddiq al-'Arusi, Muhammad ibn Tahra, Sidi Musa ibn al-Hajj
628 Sayyid 'Amar Tahtahi, Muhammad bin Bu Hammud Mulaidi; al-Hajj Sidi
613 Misa'ud al-Manduri; Sa'id bin al-Hajj Haddu al-Ufari, Muhammad bin
682 al-Faqir Muhammad bin al-Hajj Ahmad al-Barzi, Muhammad Bu Shu'an, and
[792] the rest of the notables of Tzurakhth (Blanco: note 11) sold all that was handed over to them to the brothers of the murdered man for the above sum, converting it into money.

(Blanco: note 12) The amount stated above was levied and the quantity (literally, price) was divided into four parts: 300 duros for the lineage of Izzugwaghen; the same for the Awlad al-Hajj 'Amar; the same for the Awlad Muhammad bin Muh bin al-Hajj Muhammadi al-Tazurakhti; and 150 duros for the Awlad Ahmad bin Taimunt (to be split) with Muhammad bin Tah, and the same for Muhammad bin Taimunt bin Misa'ud (to be split) with the Awlad Hammu Kabghith. One hundred (100) duros were divided in half between the son of Bukhalif, that is, Siddiq, and 'Abd al-Qadir Hashsha'.

(Blanco: note 13) Each of the abovementioned parties shall divide with its brothers (i.e. those of the same jurisdiction) the amount which it has exacted and with regard to the quantity of the same.

671 An irrevocable and non-retractable sale, effected (Blanco:
628 note 14) for repression and exemplary punishment. The sellers having
613 levied the total of the abovementioned sum, in the upper part of the
681 present qanun, from the hands of the buyers cited above, thus liberating
432 the sellers from all actions or reclamation regarding this matter and the above-cited buyer thus occupying (the lands) instead of the sellers, as his share. That is to say, occupying the place of the owner in the land, of the land which he buys and that of the owner of immovable

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property in that belonging to him, in conformance with traditional law.[25]

695 Those who attended the present (act) brought their testimony to the above according to the requirements of the interested parties.

805 --In the middle of Jumad al-Awwal of the year 1336 (February 27, 1918). --The 'adl, Muhammad bin Muhammad bin al-Hajj al-Warnuri.--Another, whose name is not known.--Another, Muhammad bin Sidi 'Abd al-Qadir al-Ghamri.

B) Commentary:

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The social disintegration which Rifian society has reached is proven by these individual agreements between dharfiqin (Blanco: note 1, corresponding to text of qanun). In the face of helplessness or irregular functioning of higher-level associations, the poor tribesmen, before falling into complete anarchy, hastened to conclude an agreement with a neighboring group in order to attenuate that anarchy, succeeding in the hard struggle for life on a poor soil. These agreements thus formed true islets of irregular and variable peace, anchored in functional (sic) anarchy.

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The necessity of agreements between lower-level lineages, who were abandoned by the rudimentary organization, obeyed, according to my understanding, those most curious periods which followed the public declaration of anarchy in the suq, when one powerful group managed by force to sustain the punishment, breaking the truce.

614 As the dispute was generalized between two preponderant rivals, the unaffected groups, before falling into anarchy, and with that notable instinct of self-defense, worked to bring about these agreements,

628 a guarantee of peace which, little by little, by virtue of their
613 acceptance by new and neighboring dharfiqin, came to be converted into
728 a general agreement between clans, thus increasing the radius of
614 peace; or they even inspired them to adhere once more to an interrupted truce.

628 "There is no law", the imgharen announced through the mouth of
616 the market crier, and the poor tribesmen, loading their faithful and
[195] inseparable companions, their rifles, were pressured into forming the
[203] ranks of a liff, and into working out guarantees or neighboring alliances, such as that which we shall examine, which, for greater efficacy, publicity and solemnity, they proclaimed in front of their notables in the suq (parliament--sic), rendering them necessary and valid for fulfillment (Blanco: note 2, in text).

671 These agreements had no other legal connotation than the very
628 short one of holding off the next spark of vengeance, being disrupted
728 or broken, due to the good will of trying to serve (Blanco: note 14) for repression and as an example of punishment, their efficacy being that of lengthening the brief periods of peace.

829 This is a rational mechanism. Everybody understood that war
721 would exterminate him; everybody desired to be at peace. But in their
[182] independent-minded democracy, they did not hit the mark with an organ of enforcement capable of imposing it, if anyone tried to disturb it.

671 Tired of tragic bloodfeuding, they drew up a truce and, logi-
628 cally, nominated the most powerful (man) to guarantee it and watch
728 over it.

671 628 613 728 Things went well, while the violators of the past were humble figures among the allied groups, incapacitated by their slight strength and the fact that they had few friends to abuse the pact by opposing themselves to other groups concerned; but when the equilibrium was upset or broken by the hatreds of the more distinguished lineage members, dragging their powerful lineages into the fray, the pact was wrecked and peace disappeared anew.

671 628 728 Observe in note 1 the guarantee of peace. In note 2, the formality of the agreement obtained. In note 3, the punishment. In note 4, the violation of the agreement. In note 5, the executive organ, the mass of the population. In note 6, the procedure. In note 7, the reason for the punishment, because it is a voluntary law. In notes 8 and 9, the fulfillment. In notes 10 and 11, the notables, the really significant personages, the Aitharbi'in. In notes 12 and and 13, with economic details, the democratic sensation of defective practice. In note 14, the Rifian illusion.

671 628 152 Notes 3 and 4 seem to show that Rifian custom is not designed to punish the loyal combatant, who, in an inflamed dispute, comes impulsively to make use of arms, incapable of dominating his instincts and always quick to defend his rights, but also to avoid treachery, cunning and hatred, or rather, vengeance, reprisal, from which the Rifians did not know how to free themselves, and which used up men and [577] [828] families. This is a notion which renders honors to manhood and stigmatizes the coward.

554 671 In notes 2, 10 and 11 it may be seen who the Rifians of significance are and that only these men, and not the ordinary tribesmen, are the executives and legislators. This proves what has been said

554 671 614 621 623 619 646 This proves what has been said regarding the treatment of social organization in connection with the ascendency and distinctiveness of the clans, of the suq, a true parliament, which is attended by the most outstanding men of the clan, tacit or vocal delegates of the jma'ths who form an arictocracy known as the Aitharbi'in, whose circumstantial attendance in some cases forms the agraw, the directing assembly and organism of the tribe.

614 671 [619] [554] This also serves to confirm our opinion that in the Rifian area it is not the tribe which legislates and executes, but the clan, through its leaders, who parley in the market. It is thus the clan and its representatives in which all powers are concentrated and only in case of a decrease in strength do they pay heed to the rest. The Rifian clan is thus a truly autonomous state. It makes the law and executes it. Look, for instance, at the division of the fine, how not a single céntimo goes to the representatives of other clans, even if they are of the same tribe.

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681 [628] 671 628 [672] Notes 11, 12 and 13, which deal with the division of the fine, prove many of these notions. The victim or his family does not benefit from it, for from the beginning his business is individual; a member of his family (i.e. one of his agnates) will already be designated to avenge him. The law does not punish more than the violation of the pact, indemnifying those who remain faithful to such violation and saw to its fulfillment. For this reason the perpetrator and his family (agnates) are punished, while all those who intervene in the service of justice benefit, for they or their representatives carry it out. If they get no money, as such, for such services, nobody would be interested, for in carrying them out, he would not be bothered to

pick up his rifle in defense of justice (a few days of visiting, free food, participation in the sharing of the fines, and even a raid, if this be the case). In the latter instance, everyone was (translator's italics) interested and desired to see justice done (with concomitant benefits of a meal and collecting one's own share of the fine).

Rifian law, according to note 7, is definitely superior (sic) to European law, because it obliges anyone who submits to it only to accept it and to agree to its fulfillment, accepting beforehand the santions which it establishes.

It is in these qanuns that Rifians may see sharply reflected who exactly are the men of prestige in the group to which they attach themselves and even the order of preference, by means of the names which figure in them; but we must not lose sight of the fact that they are edited by tulba of childish mentality (sic), a mentality deformed by their Islamic education; and that these tulba do not even translate Berber conceptualizations into their Arabic writing, as may be observed in other qanuns, thus altering the natural order in favor of their religious inclinations.[26]

Nobody believes, then, that such individuals cited in the first place figure in the documents for reasons of religiosity, but for the convenience of the imgharen who, jealous of their prestige, would have promoted interminable altercations in order to be first, in their jealous egalitarianism, and the necessity, which they saw themselves in order to avoid it, of putting above their disputes and petty jealousies individuals of neutral appearance, such as tulba, to officiate as the pacifying presidents of their stormy council-meetings (igrawn).

671 It may also be seen that here there appear no Arabic names of tribal functionaries, such as qa'id, qadi or mqaddim.

[693] The notaries who sign the documents limit themselves, then, to the registry of acts passed by the lay committee or customary tribunal.[27]

000 This procedure clarifies the executive procedure in notes 5, 6, 7 and 8.

627 613 The notables and a coterie of friends, family or volunteers, or, simply, hungry men, fall like locusts upon the households of the lineage-mates (agnates) of the accused, and they do not budge until the matter is settled; either this, or they throw them out of doors.[28] Documents and lands, proofs and possessions; the accused's agnates must hand over all of these, as well as their very houses. They have violated the pact and the pledged word. They can only save their own [628] persons, and this with difficulty, thanks to the force of vengeance, bloodfeud and reprisal, to the raqba[29], which may be taken by any member of the victim's family (i.e. any of the victim's agnates).

627 It is a rapid procedure, but not because the law or its executive organs are rapid, for, as among Europeans, as it is their own flesh which suffers, they are in no great hurry. In the Rif, the man who most strongly urges liquidation of these affairs is the one responsible for the crime, and his agnates. However, much beforehand accounts may be adjusted, the matter is over before they will see themselves free of the locusts in their quarters and before they will be able to save bread. After a few days, which are hard to stretch out, the provisions, already considerably reduced, will begin to get

695 Valid and complete testimony in virtue of which both instrumental witnesses bring testimony against them.

000 (Two illegible signatures follow.)

692 At the same time, they agreed that whoever should commit any of the wrongs (literally, "things") expressed herein, the case, together with him (the man who committed it) shall be taken to Sayyid Mhammad bin Musa[32] and Sayyid Ahmad bin 'Ali[33] (Blanco: note d).

685 Whoever enters an orchard with intent to rob shall pay 20 685 uqiyyas. If a bull should start to trample property adjacent to that 672 of its owner, the latter shall pay one peseta.

The guarantors (of the fulfillment of this agreement) are three. The Muqaddam Muhammadi bin Muhammad bin Ahmad, Hammu bin Muhammad bin 'Ali bin 'Abdallah, and Muhammad bin 'Umar bin Ahmad bin al-Hasan (Blanco: note e).

[681] Regarding the amount (of the fines imposed) with respect to orchards in cases in which they are injured by animals, this will be donated to their mosque (Blanco: note f).

If they should break a branch of a fig or other tree belonging to anyone, the owner of the animals will pay 20 (uqiyyas).

000 A signature in Arabic follows, which appears to be al-Bu Jma' bin Muhammad (signed).

B) Commentary:

671 The reading of this qanun clearly indicates in its first para- 621 graph the names of those who have established it, all of them members of the jma'th of Imhauren, bordering the Island of Alhucemas, in the 624 plain of the same name. Every two or three headmen or iziddifen (sing., 613 554 aziddif, "head") are the visible representatives of the lineage groups

621 which make up the said jma'th; they are at the same time the most
613 influential and respected members of the community. Without any
554 presidency, without rigid formalities, without oceans of ink or
[182] ridiculous voting techniques, this democracy of lineages, galled by necessity and convenience, knows how to unite the established social norms which have to regulate, in what follows, the relations between the different lineages.

671 It is thus a people's law, made by representatives of the
621 community, surrounding the act in which it is originated with all
181 the guarantee and formality for the satisfaction of the always suspicious mass and for the possible waylaying (in ambush) of its repre-
792 sentatives. For this, and as a guarantee, a greater solemnity and
621 public knowledge, two holy men are invited to and attend the meeting;
692 they will keep the session from degenerating into a dispute because
554 of the prestige which they enjoy, for the conclusion of the agreement, under which they place themselves, assures their guard and divine benediction. Even the most exigent will remain satisfied, closing the
792 road to backbiting. Even more, in order to avoid forgetfulness or
621 capricious modifications in matters of such transcendence, they draw
692 it up in writing; it is easy to understand the genesis of the agreement
212 and the development of the session in which it is taken. From that
671 time to this, it is public feasting, a subject for all the commentaries
527 in the village (households, watering places for women, and mosques),
521 such as the numerous thefts in and damages to the orchards, the har-
571 vests of which are ready and which they fear will be wasted; these are events which are repeated every year at the same time and for which they are obliged to assemble in order to keep them down.

623 Thus public
182 esteem and the ideas which such deeds provoke in others are regained;
673 they satisfy the mass of the people without having to resort to cru-
687 elty, for.....in a truly humane feeling, note c in the text shows that
685 the author of the crime must have been caught in flagrante delicto.
629 Discounting possible vengeance and not very sure of having succeeded in
623 doing so, note e in the text shows the institution of a popular tri-
554 bunal formed by two neutral individuals, two men who neither take part
671 in the agreement nor are members of the jma'th, but the fact that they
have prestige in it is a maximum guarantee of the workability of the
qanun in question.

623 Furthermore, the jma'th as a social unit is personified not in
621 its mqaddim, in the Arab manner, but, hostile to personal power, in a
triumvirate formed by three of the legislators who took part in the
meeting and who remain obligated to watch over the fulfillment of the
agreement. This executive organ of power is made up of laymen, and it
as much as the aforementioned tribunal is the result of popular election.

671 In the few lines which this qanun has, aside from creating a
624 a code, a tribunal and a police force, all of which are, naturally,
182 gratuitous, it creates a rural exchequer, and all this with a good,
natural and admirable feeling.

182 It restricts, through fear of fines, damages to the small social
671 unit it represents by guaranteeing the safety of property and discard-
626 ing cravings for economic expansion at the expense of member lineages.[35]
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691 It creates lineage authorities whose jobs are gratuitous, and,
613 always suspicious, it avoids concentration of power in the hands of one
661 person, a fact which permits neither a shade of tyranny by the latter
182 nor a bastardization of his office.

000 671 182 628 681 nor a bastardization of his office. It creates guarantees for the accused, protecting him from bloodfeuds; it indemnifies the social unit, the subclan of Imhauren, from injuries caused by some of its members, so that when the fine is donated to the habus of the village mosque, through the particular conceptualization and application of these funds in the Rif, a part of the money always came back to the jma'th in kind; and the eagerness for a reward, as among participating European functionaries, who multiply the fines by increasing their investigations and denunciations in proportion to their needs, was discarded.

671 681 627 It has--and why not?--among its other defects one which is certainly a simple defect in editing, although the frequency with which it is repeated makes this doubtful in several cases. The intention (author's italics) (Blanco: note f, in text) is punished, but how can it be proven? According only to the prudent arbitration of the popular tribunal formed by the two aforementioned individuals. A bad business.

671 621 623 614 182 Curious and noteworthy is the palpable demonstration of this municipal letter, of this qanun of a jma'th, which is careful not to overstep the bounds of adjacent institutions, such as those of personal status law (inheritance, etc.) or of those handled by the immediately superior social unit, the clan, with its qanun approved and drawn up in the markets (murders and woundings, etc.), a fact which reveals the interrelationship and interdependence of the different social units, and even their institutions and how they function.

671 627 182 This qanun is limited, logically, to neighborhood questions, among which there figures in first place that of public security (espionage)[36] and secondly that of property.

000 (espionage)[36] and secondly that of property. It$_{A}^{A}$ says nothing regarding
671 the question of irrigation, because within the territory of this subclan
312 there is not a single point of communal water available or usable only
614 by this jma'th, as happens in Thamasind (see Qanun of Tamasint); on the other hand, it forms part of a group of irrigating jma'ths subjected to the same norms which are described in detail in Chapter XIV, and, if it does not touch other points of coexistence and if it is observed in other qanuns, this is simply because such questions did not give rise to any disagreements, for all members of the subclan accepted the old and very well-known customs of their jma'th in good spirit.

000 And rough, practical men cannot lose time inventing or making things up, even though they may be capable of doing so.

671 This qanun, like almost all others, brings into relief the sweat, efforts and oversights of those who drew it up, in order to validate the precepts agreed upon and in order to satisfy, for those attending to them[37]; for, attentive to his individual interests, a man would wish to make an addendum if a mishap had occurred in his orchard the previous night, as in note i in the text. Amplifications or corrections [623] were required, for, fearing that they were not understood by the hard-headed councilmembers, the plaintiff was accredited before the legislative assembly as proof of his presence at the legislative meeting even if only to legislate egotistically for his orchard.

623 With this, they accredited that under a severe and formalized
182 appearance, there was no more than childishness (sic) and incapacity to govern (sic): lost in small details, strongly addicted to minutiae, passionately influenced by the latest incident, working anarchically (sic), each person obsessed with his own problems, attentive to his

623 182 own circumstantial interest, their councils and the agreements fallen back upon in them lacked that breadth and generality which would have been needed for a longer duration in any jural operation. In a short time, new, unspecified cases or prejudice among the influential men brought their usefulness to an end and necessitated their being re-drafted, in which previous experience, the analysis of which was discarded in order to resolve the question of the moment, did not play a part.

671 212 For this reason written laws in the Rif are rare, of only relative value and minimal jural operation, which did not go beyond the time it took the minors (author's italics), the small ones, to forget the announcement of the majors (author's italics) by the criers in the markets to reach their hands.

671 They do not have the severity of European law which, even though drafted in moments of emotion, gathers up and encloses in itself principles of general usefulness, a usefulness which does not necessarily exist at the time of codification but which comes into play with possible and presumable variations which later times can introduce, by which, with the prolongation of their legal operation, their disclosure and exemplarity increase, resulting in the slow but sure advance of society.

5. QANUN OF THE JAMA'A OF TAMASINT (AITH WARYAGHAR):

671 695 621 623 A) Qanun:

(Blanco: paragraph a) Praise be to God.--Copy.--In front of both witnesses testifying at the present act, those of the jama'a of Tamasint as-Sifli, Lower Thamasind, appeared for judgment, including:

671 Muhammad bin Muhammad; at-Talib Sidi Shu'aib bin al-Faqir Misa'ud;
695 Misa'ud bin Muhammad; Muhammad bin Muhammad al-'Attabi; 'Ali bin
621 al-Faqir Muhammad Azifzaf; Muhammad bin Muhammad of Ait Bu Bakr;
623 Misa'ud bin Muhammad; Sa'id bin 'Azzuz; Muhammad bin Muhammad; Muhammad bin ash-Shaikh 'Ali; and Muhammad bin Muhammad bin 'Ayad Amti; and giving respect to 'Ali bin 'Azzuz bin Muhammad bin 'Azzuz, (recognizing) that he is their shaikh, and, by the same token, the shaikh of the jama'a of Tamasint.

685 (Blanco: paragraph b) At the same time, regarding the orchards
821 and gardens, they agreed that if anyone be detained (while stealing) during the night, (he shall pay a fine of) 10 mithqals, and if he should do so during the day, he shall pay 50 uqiyyas. If he should steal cereals or fruits (literally, "figs"), he shall be punished in the prescribed manner with respect to orchards. If he should steal during the day, he shall pay 50 mithqals in money. If he should die
685 during and because of committing theft, there shall in no case be any indemnity to be paid.

682 (Blanco: paragraph c) If anyone should unsheath his dagger (with intent to attack), he shall pay one duro.[38] If he should point his rifle at someone of the aforementioned jama'a, he shall pay 10 mithqals to the shaikh.

685 (Blanco: paragraph d) If (the entrance) of (his) animals, such
672 as goats, cattle, sheep and donkeys, should take place in the cereal (fields) of his neighbor, he shall pay 10 muzumas.

574 (Blanco: paragraph e) If someone should spend the night as a
689 guest in the jama'a of Tamasint, all shall go to where he is staying

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2) Commentary:

This document, this community charter, as is customary with such writings, begins by enumerating the men who attended the meeting in which it was drawn up. This simple list of names reveals to us, in the first place, the supremacy of the laymen, with civil power, over the clerics, a fact which may be observed in the name of the man figuring in first place being ahead of that of the Talib Sidi Shu'aib. The order in which the names occur is not a casual one. The editors of the qanuns, profound psychologists who know to perfection the environment in which they operate, never dare to invert the terms of social protocol; they know with their eyes closed who must occupy the preferential place, and that the slightest transgression in this respect would tear down not only the agreement, through any quarrel which might take place, but also the effigy of the editors themselves[39].....

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The first paragraph puts into relief just who are the representative men of the jma'th, the notables, the heads of the lineages making up the village, the iziddifen, who formed the council regulating neighborhood relations, the only council empowered to legislate in such questions (Blanco: paragraph i or j), and equivalent to the Spanish Consejo or Ayuntamiento.[40]

The agraw or council-meeting held on this occasion by the iziddifen had as its object, as the written qanun shows us, the legislation of neighborhood questions concerning the council, regulation of the coexistence of its lineage members, guaranteeing the free and peaceful usufruct of individual and communal (i.e. water) property,

623 554 legislate, but it is not maintained by conferring distinctions on them, converting them into a caste, nor by giving them stipends for their work. For this same reason, the council-members have, perhaps, greater esteem among their neighbors. On the other hand, the jma'th punishes [581] disobedience to its decrees, but it does not impose a penalty on those who disobey the shaikh, who is simply a representative of the people with outside denomination expressed in writing (i.e. in Arabic), in view of the difficulty of expressing this in his own language.[44] That [622] he is a simple titular and outside arbiter is shown by the fact that his function, in Arabic terminology and organization, would be that of a mqaddim.

607 554 623 [578] This qanun is an excellent example of the beginnings of a trend toward personal power concentrated in a single individual, the shaikh, charged with the representation of the jma'th and the execution of its agreements;.....and we may perceive indistinctly the intrigue and the deaf struggle between this personage and the rest of the community, who are jealous of his attributes. In the first draft, the document is declared valid (Blanco: paragraph f, in text); but in the oversights pointed up in the re-reading of the document, and certainly at the shaikh's request, they consent to the fact that obedience to him be recommended in the addenda; but they have been careful, in the preceding paragraph (paragraph i), to state that only they can make resolutions or define crimes and misdemeanors through enforcement of law and punishment, always granted, of course, that such enforcement be useful (author's italics); but neither the shaikh nor anyone else can invent or contrive more than his council, because only they are capable

671 554 623 of knowing the needs of the moment, not past or future needs which do not mean anything to anybody. They are living laws designed for living people, for those present.

671 672 Paragraph b shows us how they embellish their law, taking aggravating and attenuating circumstances into account. Among these are nocturnity and dwellings (where they guard their fig and grain reserves). Attenuating and, even more, exemption from responsibility, [682] homicide is legitimate if committed in self defense or in defense of one's property.

68 554 661 671 Paragraph c punishes intention, in order to avoid disputes, and makes a small concession to personal power, permitting the shaikh to keep for himself this fine destined for the common fund.

685 672 671 Paragraph d is concerned with injuries to crops by animals, which are herded by children. The punishment is minimal.

671 623 574 In paragraph e, the law of the jma'th establishes and regulates the social duty of hospitality, imposing the burden equally on all its members. Guests learn that it is not only the shaikh who pays for their upkeep, but all the members of the jma'th, even the poor ones.

623 574 Consider also the excessive number of voluntary servitors who dance continued attendance on the guest with towels, basins and soap, and finally the amphitrion hands over to their expectant voracity all the remains of your meal, except for one small dish which, passing through the door, is submerged in the mysterious interior of the dwelling as a reward for the activity of the women or children who prepared it. When you leave, each member of the jma'th retires with whatever he presented for your comfort: pillows, blankets, soap, coffee pot or teapot, towel, glasses, candles, etc.

Paragraph h shows us the guarantee of keeping the principal religious services (funera's, etc.) and of keeping their sons educated in the faith. Today, under a different pretext, it is not uncommon to observe someone pretending to reject with disdain such a traditional obligation, for which he must not claim protection. The reason for this, rather than being rooted in irreligiosity, must be sought in possible antagonisms with the fqih.

Paragraph i conditions the obligation of fulfilling the agreements with certain legalities: that so many individuals be present at the meeting, and that they be useful and not prejudicial. They are, thus, the colegislators, working freely and without limitation, without dependence on anyone. It urges obedience.

Paragraph j recommends obedience to the shaikh.

In summation: this beautiful qanun of a jma'th establishes who are the iziddifen or council-members, and what their attributes are: to establish statutes regarding damages to crops, education and hospitality, but not to concern themselves with murder, woundings and homicide, an affair of the clan, nor with personal status, a religious matter. In the internal struggle within the jma'th, if, indeed, the iziddifen consent and delegate the execution of their decisions to a representative (the shaikh) to whom they accord circumstantial rewards, at the same time, jealous of their prerogatives, they free themselves very easily from authorizing him to contrive misdemeanors and penalties for these.

Thus the shaikh, in reality, is only the guardian of the community.

6. QANUN OF THE AITH 'ABDALLAH[45] (AITH WARYAGHAR)

A) Qanun:

671 443 [778] Praise be to the One God. The will and eternal power of Our Lord having decided thus, the congregation--in the Tuesday Market (Suq ath-Thulatha) (situated) at 'Ain Tihalalin[46], in the vicinity of (the tomb of) the holy emanator of blessings Sidi 'Amran[47]--of its owners, those of the clan of Bani 'Abdallah. (The latter) convened 623 443 (in the abovementioned market) with the idea of coming to agreement on 692 their criteria and on the purity of their actions in behalf of the 681 common good of all; and, as a consequence, they decided the amount of the fines to be imposed inasmuch as there should occur within the abovementioned market, or, indeed, outside it on the path (which leads to it), (Blanco: note a) incidents, premeditated or not, through error or imprudence, such as woundings and murders (which might happen) through gunshots, knifings, strangulations and stonings, (or, indeed), 682 pillaging and sacking. (Blanco: note b) To anyone who kills in the 443 interior of the market and is caught (literally, "had"), rashsha' shall [696] be applied to him (i.e. he shall be shot). If he has not been captured owing to having fled to another tribe (literally, "other tribes"), (they shall impose upon him a fine of) 2000 duros and his house shall be burned down to its foundations. (If he should kill) on the path (which leads to the market) he shall also pay (a fine of) 2000 (duros). Who- 683 ever should wound (another), (he shall be fined) 1000 duros. Whoever (shoots) and misses (his target), (he shall pay a fine of) 500 duros.

682 (Blanco: note c) Whoever of the Bani 'Abdallah should commit murder on Tuesday (i.e. on market day, the day of the suq) within the

capacity (i.e. of sound mind and memory) in order to testify.

(Blanco: note h) If, regarding a murder, there is brought sufficient proof (against the guilty party), the abovementioned fine shall be imposed upon him, and in case sufficient proof does not exist, he shall swear (for acquittal).[48]

(Blanco: note i) Regarding the abovementioned beginning (i.e. on Tuesdays), it is ended at the hour of the 'isha (i.e. at the dinner hour or hour of the sunset prayer). Amen.

On the sixth day of Ramadan the Magnificent of the year 1335 (June 26, 1917). Servant of his God, may He be exalted, Muhammad al-Ghalbzuri, may God be benevolent toward him, amen. (Signature). Servant of his God, "Abd as-Salam bin al-Hajj Muhammadi al-Ghalbzuri, may God be benevolent toward him. (Signature).

Legalization by the qadi. Praise be to the One God. (Both 'udul) have put down its contents, which are accepted and to which I give faith. Servant of his God, Muhammad bin 'Umar at-Tuzani, may God be benevolent toward him, amen. (Signature).

B) Commentary:

This qanun manifests in a clear way how social law is made among Rifians: where the legislators gathered to agree on it, how it was made public, whom it obligated, the jurisdiction in which it was exercised, the objective sought and the means of attaining it.

It enumerates the crimes and their sanctions, it distinguishes perpetrators and accomplices, provokers and auxiliaries, natives and stranger. It eschews pardon, it demands proof and it shows the reality of the social unit, the "fraction" (author's italics--the translator

[See p.306-- Analyst]

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671 It eschews pardon,
614 it demands proof and it shows the reality of the
621 social unit, the "fraction" (author's italics--the translator
619 would call it "clan", with translator's italics), the characteristic
631 and fundamental unit of Rifian social organization, in the same way that the jma'th (author's italics) is the elementary unit, the tribe (author's italics) the principal unit and the confederation (author's italics) the superior unit.[49]

443 The life of all peoples demands some commercial interchange and, by the same token, commercial relations as such; and the result of this is that these relations must be regulated. This necessity
621 impels the jma'ths resident in a small area to satisfy it by estab-
623 lishing a common market in a fixed and determined place on a fixed and
443 determined day of the week, and guaranteeing access and permanence to
671 those who attend it by means of an agreement among its representatives, whose written accord, respected across time, forms the law of the clan, an example of which is the qanun commented upon here. A law which, in
[182] principle, has as its only objective the guarantee of commercial interchange, establishing a truce to its disastrous life, it becomes accustomed little by little to social coexistence, giving consistency to the immediately superior unit, the jma'th, the demarcation of which at least corresponds topographically to an accident of the terrain (the side of a mountain, the course of a river, a meseta, etc.) abridging its pride and feeling of solidarity in seeing its market thus favored, converting it into an oasis of peace, a localistic tie which, overflowing the reduced limits of the jma'th, widens its notions of humanitarianism.

671 Look at how this admirable qanun shows in its first paragraph
443 the market as the temple where the agreement, the law of the people,
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671 443 614 776 was drawn up, as the names of those who inspired it disappear into a convenient anonymity as the generic "those of the clan", under the otherworldly tutelage of Sidi 'Amran. As for being alive and present, 671 614 776 I consider that the jealous and rivalrous constituents of this saint would neither have consented, however great his sanctity might be, to figure expressly in this qanun; for such was the independent or anarchical spirit of this clan, that, having iziddifen or imgharen like all other clans, nobody wanted to see himself deferred or ordered around, 554 even in name only. There is no master nor, by the same token, are there servants, titles or honors. Only men and rifles, and only reality and harshness.

614 671 Nevertheless, the common good succeeds in putting the clan's ideas into effect (author's italics--i.e. "the common good makes them agree"), according to the expression of the first paragraph of the qanun, which reveals to us the amount of discussion and work that this would cost.

671 Rifian law grows, pacifying the minds of those who live by it, staisfying a need, not an ideal; and doing so as naturally as the waters of 'Ain Tihalalin, beside which it was made, slake the thirst of the wayfarer and even the clarity of both: the wayfarer and the law. For the function of the water and the function of the Rifian [182] legal system was analogous: to cure, even though the cure was not always successful.

671 443 Rifian society, as this qanun proves, establishes a place of peace, a place which is not (translator's italics) the temple of God, the place of prayer and that selected by almost all other peoples, but the market and its environs, the temple of the merchants. This proves

671 This proves
182 that Rifian law tended to satisfy a need and not an ideal, as we have
443 just said; for further on, the qanun of the Aith 'Abdallah points out
796 a truce to be held on a given day, on Tuesday, the market day, and not on Friday, the religious day and the day of attendance at the noon prayer in the mosque. The day of peace is thus a layman's day.....

671 The law is simple. And hard. And sufficient to be encrusted with obligatory relief in the most refractory cranium of a believer, an objective impossible to obtain among modern societies. Nobody pretended ignorance, as all are wont to do or swear today.

There are neither aggravators nor attenuators, only consummate (and consummated) acts.

Paragraph a: They discount intentions, so difficult to prove
[681] and needing so much patience to investigate. They attain results more easy to prove and more quick to sanction (i.e. castigate) and be sanctioned, in conformance with their rudimentary law.

671 Paragraph b: A hard punishment; the liquidation of the mur-
682 derer, with the loophole that after his flight, the law may fatten on him. But it does not give a heavy punishment to his agnates, although it avoids impunity. It does not cease to be more humanitarian than other analogous qanuns, if indeed this custom is followed in reality.
[681] The gradation of fines is simple and even attempted murder is penalized.

671 Paragraph c: A typical example of the fact that Rifian law is only concerned with the external manifestation of the crime.

[681] Paragraph d: And so that the gradation of the punishment follows that manifestation as a shadow does a body, from the time that it is initiated.

671 Paragraph e: This paragraph distinguishes principals from accomplices or auxiliaries.

671 181 Paragraph f: A virile and rural society distrusts the veracity of the so-called humanitarian sentiments, closing its doors to the intrigues which, under such a mask, provoke influential individuals to save their allies and other interested aspirations which mock the objectives that the law, to which they freely gave themselves, pursues.

671 609 628 Paragraph g: We have here a precise and exact detail, an excellent delimitation of a truce, a recognition of Rifian public law (i.e. jural procedure) and interest protecting the stranger, to whom this law guarantees a wide and sufficient time of commercial activity and a prudent warning that he leave an open field to the fierce internal bloodfeuding. We have here a manifestation of the social unit, 671 609 614 the clan, which shows us its reality and consistency, which recognizes a common interest and one superior to its own intestinal vendettas; and this permits it to guarantee to the neutral, to the stranger, a free passage and activity throughout its whole territory (author's italics).

671 695 Paragraph h: Two important additions are made here to the hurried first draft. It is necessary, first, to guarantee the person of the accused against the passions of the moment, the outward appearances, the ill-will and the outright suspicions, by means of evident proof (author's italics), offering him the means of avoiding such passions by taking oath. And in the second addendum (Paragraph i) they list, furthermore, and completing it, the duration of the truce or time of peace.

671 794 212 In these childish (sic) legislators we may observe the suspicions and fears which the poor tulba plant with their confused drafts of these qanuns, drafts which they never succeed in becoming satisfied about; for they see themselves bound to the impossibility of correcting their vague and hazy language and can only modify it with addenda which for the most part only give rise to new and further confusions. But this is not the fault of the man who grasps his rifle, but rather of him who wields the pen.

671 [621] [623] [614] We see in this clan qanun how it refuses to concern itself with matters that fall within the exclusive competence of the jma'th, which has its own independent life[50], as the final step of Berber anarchy (sic). Thus, for example, it says nothing about irrigation, orchards or fields, hospitality, education, grazing lands, collecting and gathering, etc., and neither does it enter into private rights, personal and successoral law. It limits itself, rather, to regulating the coexistence of its component jma'ths, lineages and individuals in the only places where they come together (i.e. markets).

671 183 It is also to be seen that the social or public law which this qanun represents is inspired by norms which are more elevated through the non-admission of compensation, such as blood-spilling, in cases of common prestige (murder in the market) without, at the same time, ceasing to be inspired by norms more humanitarian than the private rights admitted by vengeance and reprisal, to which the codes of social units like this one are opposed,.....

671 614 613 182 So that, while the qanuns of clans tend toward the clans' preservation, they develop solidarity, and neutralize the rivalries of

671 614 613 182 component lineage groups, for the practices of such groups tend to disintegrate them through the violent opposition of the individual interests of their members. The clan officiates as a soothing influence on the disorderly appetites of the lineages, patrilineally and patrilaterally united by the strong tie of blood.[51]

671 693 695 623 621 782 7. QANUN OF THE AITH 'ADHIYA[52] (AITH WARYAGHAR)

A) Qanun:

Copy.--Praise be to God. In the presence of both the undersigned notaries, all those of Bani 'Adhiya (properly, Bani 'Aziya) made testimony, both adults and minors (author's italics) who constitute the jama'as of the Ait Tazurakht, Ait ar-Rabda, Ait Kharbush, Ait Mnudh, Ait Ajdir, Ait (illegible)[53], Ait Ighmiren and Ait Fars, that they, when they went together to the tomb of the saint Sidi al-Hajj 'Umar, in ar-Rabda, sacrificed two bulls as an offering to him[54], (on the occasion of which) an act of reconciliation took place between them, with respect to murder, theft, pillage and other acts of this kind. In case any of them should kill another, then all the above-mentioned villages of the Bani 'Adhiya shall unite against him and burn his estate and that of his brothers (i.e. agnates); they shall drag them from their houses and exact from them a fine of 1000 duros. This (shall be the case) if he should have killed outside the market[55] or without witnesses (literally, "without a meeting"). In case he should kill someone in the market or in front of witnesses, then the procedure shall be as stated above, all uniting against him, burning his estate and that of his brothers (i.e. agnates), and taking from them, as a punishment against him, a fine of 2000 duros.[56]

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685 In the same way, they agreed to impose fines for all damages or injuries which are caused, such as theft, etc.

Whoever should steal a sheep or a goat shall be fined 10 duros, and whoever should steal barley, broad beans, etc., from someone else's land shall be fined 5 duros.

681 In summation, all injuries or damages caused by one of them (the Bani 'Adhiya) against another (of them), a fine shall be levied from him, whoever (the party guilty) of the injury or damage may be.

671 In accordance with the above, their declarations were put down, as they have been expressed and explained. Valid and complete testimony. The parties who took part in the present agreement know [693] the value of this agreement, and because of this, both the undersigned notaries testify to what is set down and to the fact that they (the Bani 'Adhiya) are in a perfect state of legal capacity (of sound minds and memories) and that they are known (personally) to them (the notaries).

805 On the second day of the divine month of Jumad ath-Thani of the 600 year 1332 (April 28, 1914). Servant of his God, may He be glorified, 'Abd as-Salam bin 'Abdallah at-Tafrasti, may God be benevolent toward him. Servant of his God, Muhammad bin 'Aisa at-Taxurakhti, may God be benevolent toward him.

B) Commentary:

671 This synthetic qanun of the Aith 'Adhiya, drawn up in conformity with the dictates of the purest tradition, contains within it suggestions analogous to the rest of the documents which we have studied.

It is a pact (author's italics), by which those who have [771] agreed on it must in future regulate their coexistence and traditional

671 771 law, a lay law ignorant of religion even though it speaks of the Sacred Book, the irregular application of which, in such a recent and turbulent period, leaps into view, proving that Rifian Islamization is superficial.[57]

671 182 [778] [782] [779] [514] This pact combines all the pleasant conditions of the Rifian appetite. It is verified in the habitual place of reunion for transcendental acts, taking place under sacred protection, in addition to lubricating the agreement with the heathen rite of blood sacrifice, the Islamic promise of peace, and the feast day for the sober Rifian, an enforced vegetarian.[58]

671 182 614 619 It brings together the mass of the Aith 'Adhiya, a subclan of the khums (Rifian thakhammasth) of Aith Bu 'Ayyash; and democratic practice advises this mass not to mention the name of any individual in writing, as this might presuppose questions of distinction and preference, swelling their heads.

671 182 628 681 [511] It establishes the ddiyith[59], fixing it at 2000 duros, the maximum sanction which it is worth pointing out and imprinting indelibly in the minds of those who attend. This is a fabulous amount of money for the economic means of the people to whom it relates; and it is accepted as much out of the respect which radiates from it as from being generally admitted in analogous pacts of which they have news in neighboring districts.

671 628 681 184 443 It must be pointed out, in order to avoid the confusions which can arise from the different editorship of the qanuns, that the real ddiyith, or blood money (author's italics), does not, in reality, differ anywhere throughout the Rifian mountains, and must be valued at

671
628 1000 duros[60]; for the double amount of 2000 duros which appears in
681 certain qanuns refers only to a single case and to the place in which
184
443 the crime is committed--the suq, or tribal market.

In this single case the 2000-duro fine is imposed, and the
681
619 reason is simple: the crime in these conditions and in this place
443 reaches out to attack not only the prestige of the tribe but the common interests of Rifian society, and endangers them gravely; for, naturally, when news of the crime is spread by the regular constituents of the market, this keeps away the merchants from other places who have received word. This, in turn, brings about a commercial blockade (author's italics) of the tribe, which originates from insecurity of persons and property; for rare is the occasion that the tumult which murder and woundings bring about does not end up in pillage.

681 For this reason the Rifians saw themselves obliged to cut down rigorously and to threaten with heavy sanctions any crimes of this magnitude and kind, the gravest in the society. The ddiyith[61] is
681
628 therefore doubled in this case. We have here the reason, distinctly
682 made, why, in my opinion 1000 duros must be established as the fine
614 for homicide (a sanction which the clans of the Aith 'Abdallah and the
619 Aith Bu 'Ayyash both establish and which we encounter in the ribat, or
443
613 agreement, which allied such tribes as the Sanhajans of the Aith Siddath to the Aith Khannus, and the Bni Gmil to the Bni Bu Frah), and a further 1000 duros for homicide committed in the market; for the damage and disturbance affect not only a single lineage, but are prejudicial and shameful to the whole tribe, which by virtue of the laws of reprisal and blood-vengeance must fatten on any man who forgot his duties or obligations to it.

628 After the fixing of the ddiyith[62], there is the most laborious
671 agreement and the most hurried need for its enforcement; and the rest
673 of the resolutions have no objective other than that of embellishing
681 this, establishing a graded scale in conformity with the external manifestations of lesser crimes, which the Rifians did not deem necessary to put down in detail in their qanuns, in order to facilitate an easier mnemonic retention of the principal transgressions and resultant fines.

671 It points out theft with an admirable simplicity, according to
685 what is stolen, and it doubles the fine for a rustler of domestic
231 animals, a fact which follows the logical economic notion of the
556 Rifians of presenting such animals as the most esteemed source of wealth, as among nomad tribes.[63] It should be remembered that in the
178 old Rifian society, the consumption of meat was limited by the scarcity
262 of pasturage to Fridays, the holidays and by physiological needs, and
231 was regulated by the common sacrifice of animals and by compensating
224 hunts on fixed days.

If the meat supply diminished and they considered it indispensable, it would be completely natural to take precautions to pre-
685 serve it.....For precisely this reason the Rifians judged the theft of
673 animals as a greater crime than that of grains, and sanctioned it accordingly.

671 8. QANUN OF THE AITH KHATTAB[64] (AITH WARYAGHAR), ESTABLISHING THE WEDNESDAY MARKET, AND GENERAL QANUN

A) Qanun:

Praise be to the One God. When peace reigned (literally,

671 "when they were under God's protection") among the notables of the Bani Khattab situated on the seacoast[65], God made them assemble, both adults and minors (author's italics), and made them put their ideas and criteria into agreement. Then they established the Wednesday Market (Suq al-Arba') in front of the tomb of the saint Sidi Bu 'Afif[66], so that it would be a benefit to the poor as well as to those who should desire prosperity.

May God make concord (and harmony) endure among them, and may He solidify (i.e. render prosperous) their market. The establishment (of the aforementioned market) was due to the blessed sharif Sayyidi Ahmad bin Sayyidi Misa'ud[67]--may God make the whole tribe happy--and to the following persons of Ajdir[68]: to the opulent and considerate Shaikh Muhammad Shiddi, to the Qa'id Sayyid Bu Bakr bin al-Hajj Muhammad Ushshan, to the Murabit Muhammad Ashahbar al-'Azizi al-Ghalbzuri and to his neighbor Shaikh al-Hajj Haddu bin Tahir u Musa w 'Amar, to Shaikh Haddu bin al-Shaikh Hammu Taqal'ait Amhawl, and to Shaikh Haddu bin al-Hajj Muhammadi. All these shuyukh are those who brought their criteria and aid (for the establishment of the market), and above all of them (is the worthy help) of the sharif Sidi Ahmad.

Each of the shuyukh designated those who had to help them in the aforementioned market; these helpers are their brothers (i.e. the people who fall under their jurisdiction) and have to be the first to arrive at the market and the last to leave, in order to safeguard it from prejudice, harm, danger, evil and brawls which might occur in it (i.e. within its limits).

000 For example: whoever, in the market, should attack (someone)

682 For example: whoever, in the market, should attack (someone)
443 and should kill him shall be fined 500 duros[69], and if, in attacking
he should miss him (i.e. if the bullet should fail to reach its mark),
685 he shall pay 200 duros. Whoever should take justice into his own hands
443 on the path to the market shall be fined 50 duros and shall return what-
689 ever object he made off with. Of those who should incite riots with
shouts and gunshots, as (happened) to the people of Tafrast, Ait Musa
w 'Amar (both in the clan of the Aith 'Ari) and to the people of Ajdir
(in the clan of the Aith Yusif w-'Ari), each one shall pay with his
689 death (literally, "with his neck"), that is, he must be shot. Whoever
443 should be discovered in the Monday Women's Market (Suq ath-Thnain n
562 Timgharin, at Azghar) shall be forced to pay 10 duros.

671 This is what has been decided (for fulfillment) of justice in
443 the above-mentioned market. May God, for the common good, put into
agreement His ideas and the criteria of His lords (of the market).
689 Punishment shall seek out anyone who should wish to provoke riots--
may God in His power make him meet his end.

000 The abovementioned shuyukh have worked with good intent, with
the idea of being useful. May God cause the miracles of the saints
to be manifested, and of the saint of the tomb situated in front of the
market (i.e. that of Sidi Bu 'Afif).

Each of the abovementioned shuyukh designated among his brothers
(i.e. among the men in his jurisdiction) those faithful to him (i.e.
those who constituted his escort and supported his decisions), as for
example: the Shaikh Murabit Muhammad Ashahbar designated among them
the Murabit bin Muhammad bin 'Abdallah Bu 'Azza; the Murabit Hammu bin
al-Hajj Muhammad w al-Qadi; 'Umar bin al-Hajj Tuhami Adardush; Muhammad

000 Taqal'ait; and Muhammad bin al-Hajj Hadidush. All these are faithful (adherents) who are under the orders of their shuyukh, each one (obeying) the orders and countermands of his shaikh. May God help them and put them into agreement (i.e. make them agree) for the common good, because in this is founded the pleasure of God; may God cause all to stay in power, with His protection and generosity.

[805] At the end of the divine month of Rabi' al-Thani of the year 1325 (June 10, 1907).

Servant of his God, may He be glorified, Mhammad bin Muhammad bin Mhammad al-Ghalbzuri, may God be benevolent toward him. (Signature).

B) Commentary:

671 This qanun, following the criteria by which the others have been analyzed, appears the least suggestive, due doubtless to the redundancy of patronyms which it contains, none of which the editor, who is a perfect chronicler of this society, dares suppress in his personal adulation, while he forgets to consign with analogous detail the principal material, the punishments of crimes which are the object of the industrious and complex body politic.

000 He would have beencapable of writing the names of all his constituents, surpassing his own record, which he undoubtedly left established with such an interminable list, the reading of which few could finish, from not doing it with the derisive tone and with the falsetto voice to which they are accustomed, revealing the affected, pompous, superficial and routine mentality of the Arabic schoolroom, very adherent to form but exempt of content[70], which the pure Rifian

knows how to listen to, attentively and curiously, with a composure, artfulness and incomprehension which is charming, so that he may interpret it later on according to his whim, and with such freedom that no one could recognize it if there were anyone in this happy land to whom the idea of losing time through research might occur.

The memory of Rifians is of a shocking fragility for whatever does not interest them or is lacking in precise outline.....

693 671 212 How many disputes and fights the talib-editor might have avoided if he had had the least idea of the transcendence of his writing and of his notarial function, and if he had listed, instead of his dull litany of names, that by which "they established a qanun for all in general", from which he shows no more than four examples (author's italics), and these very entangled!

693 212 Undoubtedly the first man to be convinced of his uselessness and transitoriness as a legal recorder was the neglected talib-editor himself. He would not judge it opportune to bother about this, knowing the slight value which Rifian society attached to proof written down by the cunning tulba, to whom it only apportioned snares and delusions. Perhaps intentionally in order to convert himself into the sacred repository of all the juridical sciences of the Aith Khattab, a pre-eminent post, he saw himself as an obligatory consultant for all the disputes among his forgetful constituents, for these would require his testimony and assure him of a certain measure of preponderance, especially sacerdotally, aside from an obligatory invitation to a final meal. All conjectures fit, from that of ignorance to that of gluttony. What is certain and unpardonable is that this voluntary omission deprives us today of tasting the needs which they felt and the form in which they sought to remedy them. -322-

000 sought to remedy them.

671 This qanun, from a social standpoint, shows certain differences
671 from the others. We may appreciate, for example, in these men of the
181 Mediterranean coast their greater contact with European civilization,
[177] how they struggle to rise from the mass, emerging from the anonymity in which the ritual words "adults and minors" are apt to encircle them, from these words which in many qanuns designate those who attend their council meetings, from which there only stands out in any decorative fashion some religious individual (i.e. a sharif or murabit), which was more in conformity with their communistic (sic!) society.

181 In the same manner as today, the city dweller wishes to rise from
369 the rural mass, holding on with doubtful pleasure to the easy means
554 of using shoes, visiting cards, gloves, tombstones and cigarettes,
177 in the European style. The city dweller, by the mere fact of lengthen-
369 ing his jillab[71] and putting on shoes, if not sneakers[72], considers
554 himself on a higher level than his rural fellow-countrymen, although
291 his mentality is analogous and his virtues inferior.

369 The countryman has an opinion of the European which borders
829 on indifference, as he neither feels cravings to imitate him nor ape his manner. The city dweller envies the European, and for this reason he imitates him and hates him.

369 Thus the vivacious city dwellers, when they wish to gain the sympathy of their fellow countrymen and, on being forced to intern themselves in the country[73], try to imitate the latter ostentatiously[74] .....although this by no means lets them succeed in escaping the ironic judgments of these astute countrymen.

671 554 Abundant in these ideas, we may observe how in the first lines of the qanun some names are adorned with the honorific titles of shaikh and even qa'id, titles which fit the members of this society as well as two pistols do a saint, for not only did they not realize nor did anyone admit the roles which in Arabic correspond to such titles, but, as can be appreciated, the nominal qa'id (i.e. Sayyid Bu Bakr bin Muhammad Ushshan) does not occupy the first place, which he not only had to yield to the opulent and considerable Shaikh Muhammad Shiddi, but to crouch behind another, second shaikh, 'Ali Azarqan, and we finally discover him in third place modestly lost among the notables: the adults (author's italics), with this single, authentic and legitimate representation: that of his lineage (family group) or dharfiqth, and all the rest, of the social group or jma'th.

It may be observed that this is the only qanun in which the imaginary personage of the qa'id is expressly stated; his title and role are as unreal as all other Arab ones in the Rif, whether they be called bu mwarith, ukil l-ghuyab, shiyukh, mqaddimin and even qudat (pl. of qadi). These people did not look toward Fez nor toward the circumference of the Rif, but toward its center, toward the interior, toward their villages. There was no power other than the assembly, the agraw[75], the council of elders. For this reason Rifian society.... could have previously been considered concentric.[76]

181 614 121

We may also see the coincidence that this qanun, the only one in which the term qa'id appears, is also the only one which contains that of amghar among the last names (ninth to last) as well as that of ra'is[77], and it reveals to us how the tulba of the Aith Waryaghar, who

671 554 693

671 surprised Raisuli so much later on[78] when he saw their warlike pro-
554 clivities, were employed in an executive capacity so far from their
693 real profession.

671 If we consider the time in which they were drawn up, quite
779 recently, this would show us these apparent confusions as a more advanced state of Islamization.

671 Going further in the reading of the qanun, we notice a confused editorship or translation in the examples which it gives us. We do not know if we are commenting on a qanun, the Rifian penal code,
671 or a shooting match. Why is it that if a man wounds someone in attack,
683 he must pay a fine of 100 duros, and if he misses him, he must pay double that amount? Because of his poor markmanship? But then instead of limiting aggressions, of tending to diminish damages and injuries to the individual and to society, were the Rifians thus impelled to aggravate them with this exhortation to perfect markmanship, a stimulus to murder? Undoubtedly there is much confusion here, and I myself am not certain how to explain it.

681 Common prestige and experience arm them and cause them all
443 to watch over and keep their guard against each other, stipulating the severest punishment, above their own individual interests, for those who attack in the market. They consider this a crime against the
[619] tribe, the worst crime in Rifian society, which is paid with violent
[673] death, without admission of the compensation which another qanun of the Aith Waryaghar[79] mentions, although this does not do so.

671 This qanun also shows us a very curious aspect of Berber society, in general and of Rifian society in particular, as we have commented above.

562 commented above. Two societies live together in perfect harmony among
671 the Rifians: the masculine and the feminine. To the latter, as in most modern societies, it reserves free and sure places for women to gather, the legitimacy of which is expressed in this qanun establishing sanctions against intruders, a fact which guarantees the tranquillity of both the ones and the others (i.e. of both women and men).

562 This persistent and good custom is no less faithfully observed
183 today, and within the last ten years (ca. 1930) there has been only
794 one attempt to go against it, made by a young talib of Ibuqquyen, soon
443 discovered under his disguise by the women themselves (after entering
689 the Monday Women's Market at Azghar in Aith Waryaghar), who handed him
178 over to the mkhazniya services, and from there he was sent to jail at the administration office of Izimmuren (Ibuqquyen). The women's
562 markets are still held in the same places and on the same days as they
443 were hundreds and thousands of years ago.[80] The Aith Waryaghar, very
178 attached to their traditions, reserve and guarantee for their women
183 special meeting places, a fact which speaks highly in their favor. Other tribes have now lost this custom and today there remain only the names of the places in which these women's markets were held.

671 In the qanun discussed here there can be discerned a body of doctrine, a community of ideas, an analogy of customs which is precisely what forms the so-called Berber Bloc, with needs and identical means of remedying them. The details may vary, as may the amount of
[184] the fine and its order in the drafting of the qanun.....but the funda-
(681) mentals, the acts which they considered reprehensible, those which merit punishment, did not vary, nor did the recording of the qanun and the proportion, in context, of the fines.

000 the proportion, in context, of the fines.

671 There are no offenses against the form of government, nor
687 against religion; more aptly put, there is no need to invent such
688 offenses, nor, by the same token, any punishment for them, because
184 all are agreed in such questions: republic and Islam.

184 This unanimity of opinion among the different groups of legis-
614 lators in the diverse clans of the tribe proves to us their (relative)
619 independence, and this is one of the ties which gives the tribe its
671 form.[81] It is clear that if individuals and families respond to a
602 private common law, the associations of these kin groups, the (uni-
linear) principles which link them together, and their common law
could not be very different, given their proximity (i.e. to each other).

671 These qanuns, which are the most outstanding signs of the
614 rudimentary (sic) common or public law of the Rifians, reveal to us
and define better than any other consideration (i.e. aspect of Rifian
life, or institution) the reality and importance of that social unit,
the clan, both a truly independent state and the ancient fatherland
(patria) of the Rifian; and the whole of this, the ensemble[82], explains
the Rifians' capacity for resistance in the struggle against any in-
vader through the multiple compartmented monopolies (i.e. clans), each
of which was opposed to the other, at the same time as it showed im-
potence and weakness to the outside (world).

671 These lay and democratic laws, full of suggestions, show the
619 Rif to be a land of custom, forming, as Montagne shows so clearly for
181 other Berber groups[83], a mosaic of minute independent republics, in
opposition to the Moroccan Empire, with its rigid sharifian organiza-
tion and administrative framework of qa'ids; for the qa'id is, as we

671 have just said, a personage who does not show up in any qanun as dis-
619 charging his office or as even providing the most minimal and non-
181 transcendent representation, for in the one qanun in which we finally discover him (the qanun commented upon here) we have already shown that he hides himself modestly and even effacingly behind the camouflage of
619 two other shiyukh. The result is that not even in the big list, in
554 the listing of "the fat ones" (i.e. the enumeration of the clan brothers of each of the imagharen of importance), does this ambitious man gain first prize, the individual who seizes this being an opulent and lay tribesman whose preeminence clearly gives a clue to the psychology of the talib who drafted the qanun as well as to that of his constituents.

619 And, reflecting upon bases like these, it is well to ask what
648 reasons or exigencies the first protectorate functionaries felt, discounting both imitative and ignorant ones in order to orient their policies toward big qa'ids who, even if their stature has been diminished, are no longer to be seen for sure anywhere.

To impose upon the tribes more or less significant personalities, representatives of concentrated power, when, subdivided ad infinitum, they unite in their opposition to all types of personal power, is always an ungrateful undertaking and one full of surprises, as practice has shown us....when power is imposed from above.[84]

642 In the Rif, where all are personalities, only a mass-oriented political system, and not one oriented toward individuals, can bear fruit.[85] The enforced utilization of one or even several dozen persons of some importance serves no purpose if this does not benefit the mass, taking up its aspirations and satisfying its needs, anxious for freedom

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167 They were too good and honorable to see themselves die out, with no fear other than that of the market announcement and without guards of any sort, on a most miserable land, which their way of life made habitable only through emigration[92] and epidemics taking care of the surplus population.

Clearly, bound to necessity, it incited the envy of more than one individual, considering the very slight severity of the punishment, the possibility of concealing the offense and the difficulty of proof, for which reason the people took refuge in traveling to places unknown to them on days which were not market days, without taking natural precautions.

671
685 The qanun of the Aith Siddat shows us, in notation (c), the offense of house-breaking, with a concise and admirable clarity; it recognizes for the owner of the house the right of violent opposition, a previous guarantee to the society that neither a difference of opinion nor known resentment shall mediate between them.

671
682 By the same token, notation (b) indicates and punishes the accomplice with the same penalty in offenses in which blood is drawn as does notation (k) with 50 mithqals in the rest of the cases.

And finally, in notation (d), the right of legitimate defense is established without the slightest doubt.

671
562 If in each one of the qanuns in this volume it is easy to discover its characteristics and, knowing the region, to find out what each one conceals, to explain what it says and the reasons which it gives for doing so, we must point out, in the present qanun, the interest which the Aith Siddat maintained in enforcing public respect

92--The reference here is primarily to Rifian labor migration in Algeria.

RS 671 619 687 648

the people of Bani Dar al-Zikhlif, the people of Agni, the people of the Awlad al-Hamdi ibn al-Qadi of Qubi'a, the people of Iharumen, the people of Igzinnayen[96] and the people of Bani Gmil, all agreeing among themselves, with respect to the defense of the border, (to impose) a fine of 2000 duros upon any of those mentioned who, in case of war in Dar al-Zikhlif, should flee through negligence (at a time when cooperation in border defense is needed) or should even proceed with cunning (in order not to fulfill the agreement), for which he shall pay the sum mentioned earlier in the present document.

RS 687 614 648

The allies of Muhammad bin al-'Arbi and the Awlad Ghadura who flee back to their homes in Dar al-Zikhlif shall pay the above amount to each one of the clans. A sum shall be levied from their hands by those indicated in the earlier part of the present document. Those of both clans mentioned who would appear for judgment in the act and combat against their own (people) remain exempt from payment[97], (the justification of) this procedure being that it is the only way to impose brotherhood and unity, and to cause extralimitation against them to cease.

000 He who attended the present agreement with both parties and heard from them what was agreed upon extended this to the requirement of those who solicited it.

At the end of the divine month of Rajab al-Fard of the year 1336 (May 9, 1918).

Servant of his God, (illegible).--(Signature).

RS 671 648

B) Commentary:

The above qanun, as a perusal of it indicates, represents an

R S 611 648

alliance between the people of two distinct tribes, the Bni Bu Frah and the Bni Gmil, or, more specifically the clans of Agni and Ulah S'aid in the first tribe and their neighbor Bni Gmil[98], situated in the hollow of the upper basin of the Wad Bu Frah.

R S 648

This alliance has as its objective more than just the defense of the border, as it points out, for it guarantees the lives and property of its constituents along the tribal frontiers, as these, in the Rif, do not have the stability which they do, for example, among European states, because purchasing of land, principally, renders them extremely mobile.[99]

R 616

These alliances (lfuf) have a significance and a mechanism among Rifians which we have already attempted to assess in the first part of this conference.

The liff, the origins of which are confusing and the development of which is complicated, is difficult for a European to understand; but nevertheless, it attracted us greatly as the center-piece in the life of the Rifian mountains.[100]

The way I view it, the liff is not a social institution, nor does it fit into the family institutions already considered with reference to the kin group; and this is because it binds together different social units, as in this instance, rather than individuals of different families.[101] The liff is more of a political institution and it represents in Rifian political life a complementary force of higher and intermittent action. Perhaps it may have been the real regulator (author's italics) of Rifian life, not coming into play until other forces became rarified or became disturbed. For this reason, to my way of thinking, it is so important.

616
613 survival, up into our own time, of insignificant tribes, true Rifian
619 Switzerlands, authentic islets, like Thafarsith, which were sur-
182 rounded by powerful neighbors.

616 Thanks to such a mechanism, the individual within the family,
182 the family within the jma'th, the jma'th within the clan, the clan within the tribe, and the tribe within the area or region all attained an unstable equilibrium, but an equilibrium, nevertheless, from start to finish, the most curious facet of which was expressed in the linkage of clans and in the two great rival bands of the Ghmara and the Sinhaja.

616 I am unable to determine whether the liff was the cause or
121 the result of the fractionization which Rifian anarchy brought about, populating the mountains with a real mosaic of small autonomous states which were grouped into two rival bands and equilibrated thanks to the linkage of the liff system.[102] Many reasons could be given for one or the other theory.

616 It is certain that the liff, in the Rifian ethos, is a mysterious and powerful force, to which the tribesmen submitted body and soul, if one might say so without necessarily admitting a comparison of European methods of alliance.[103]

671 This qanun offers further proof in support of the fact that the
614 clan in the Rifian mountains was an autonomous state within the tribe.
619 Thus, as in this case, we see it brought together with the neighboring
644 clans of another tribe (Bni Gmil), regarding the subject of war on the
648 border, while its members either forget or eschew union with another clan of their own tribe (Swahil of Bni Bu Frah)[104]; according to European modes of thought, such an action would induce a lack of esteem

614 648 in the tribal political organization and entangle it badly, a tribe which up to now appears to be the least clear or tangible of all those studied and known so far.[105]

687 [671] [829] As European states do, this document imposes a public duty upon the natives of the territory, for they must defend their tribal lands with their weapons in their hands; and it even includes punishment for anyone who shrinks from staying in the danger zone. While, [682] [443] however, among Europeans such a punishment is moderate, we see that among Rifians, by the importance of the fine (2000 duros) the penalty is as high as that for murder (i.e. in the market), for this amount is equal to that stipulated as ddiyith[106] in two qanuns already examined, that of Aith 'Abdallah and that of Aith 'Adhiya.

Thus, then, an offense against patriotism constitutes a crime in itself, and it is sanctioned analogously upon the coward and deserter as homicide is upon the murderer.

577 574 671 This may explain the virtues, such as courage and hospitality which we have so frequently seen attributed to the Rifians; for it was precisely their clear-cut laws and rude (i.e. rough and ready) custom which urged them on, stimulated them (see the qanun of the jma'th of Thamasind for hospitality) and which perforce they practiced.[107]

671 701 [702] 11. A QANUN OF HARKA--AITH WARYAGHAR:

It is obligatory for all the qa'ids and members of a harka that each one of them must present himself in fixed turns, which each one must take without losing a day. Whoever does not obey this order, except in the following cases, such as illness[108], and nobody may go on leave during his turn without authorization from the kabir al-mahalla.[109]

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681

Fines to be imposed:

Harka members: for each day of absence, two (days to be served) in the harka, and a fine of 2 duros.

Qa'ids of 25 men: the same, with a fine of 3 duros.

Qa'ids of 50 men: the same, with a fine of 4 duros.

Qa'ids of 100 men: the same, with a fine of 5 duros.

Qa'ids of 200 men: the same, with a fine of 6 duros.

This is an order emanating from the fortunate Makhzin (i.e. of 000 'Abd al-Krim). May God protect it. In Taghzut on Ramadan 23, 1344 (March 8, 1926). By order of 'Abd al-Karim bin Ziyan.[110]

12. DOCUMENT OF EXEMPTION FROM PAYMENT OF TAXES[111]:

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Praise be to the one God. The blessings of God be upon our (lord) Muhammad, his family and friends.

It shall be known through the present document that we, taking into consideration the services rendered to the Makhzin and the taxes which because of hospitable attentions with warlike objectives (holy war) weigh upon the bearers, the sons of the late Si Ahmad bin Si 'Ali al-Tawti are exempted by us from the contributions concerned....The 'amil, in virtue of this, orders that they not be asked of them....And the peace.

Safar 18 of the year 1341 (October 10, 1922). Muhammad bin 'Abd al-Karim al-Khattabi, may God be with him, amen. (Signed and sealed).

13. QANUN OF THE SEA--AITH WARYAGHAR[112]:

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A) The Boat Owner:

He owns the boat (agharrabu, pl. igharruba)[113], acquired by transfer, sale, already used or repaired by carpenters on the beach, of whom there are still a few[114].

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Any fisherman with dynamite is the owner of the fish and site of the explosion while he remains there. Fishermen with lines may not enter the radius of action of dynamite fishermen.

In fishing with explosives, the man who first sees the fish and stays to wait for them is entitled to remain in the spot observed. Nobody who has just arrived can shoot. For this reason, fishermen with explosives keep out of each others' way.

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G) Recovery:

Any object without a known owner which is abandoned or tossed up on the beach by the sea is the property of whoever finds it.

Any object floating in the sea is the property of whoever picks it up; and if there are several people who put their hands on it in order to hoist it onto the boat or drag it onto the beach, it, or the proceeds from it, are divided equally among all who have worked, in the last instance, among the crew and the boat owners; but a man who sees it from the sea, for example, has no right to it, as he has not helped to get it on board or ashore. Work, and not vision, is rewarded.

H) Arbiters:

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Arbiters are men who are skilled in maritime questions and excellent mediators whose reputation, in addition to the reduced coastal limits of their tribe(s), is known and commented upon in all the villages of the neighboring tribes; and to them the inhabitants of these villages go voluntarily in order to submit their differences of opinion when these deal with matters relating to the sea.

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Those who had most fame in the Rifian coast were, long ago, the Ghmara, to whose ports of Taghza and Tigisas it was not uncommon

628 to see rival Rifian feluccas betaking themselves and respecting the
628 verdict settled by some old seawolf, until they took over the doctrine
554 and set up new clauses in the customary law and applied it with the
671 same success spreading it in later times even to the Iqar'ayen; and
692 finally one could see the Ibuqquyen going to Ajdir, submitting them-
[115] selves to the arbitration of the so-called rm'addjim (Ar. m'allim), or master, who later reached the maximum position of being 'Abd al-Krim's Minister of Marine, during the Rifian War, this individual being the one who has provided me with most of the data to be found in this
628 qanun. Among the Iqar'ayen the Ra'is Muhand n Bu Tahar of I'azzanen
554 is well-known, and among the Ibuqquyen there is the pilot of Gardiner's yacht, 1-Hadi n Dadi[117], and other old fisherman of the Aith Waryaghar and Ibuqquyen. These individuals were appealed to when the solutions of the ruyas (pl. of ra'is, or boat-masters) did not satisfy any of the parties in question.

I) Skills and Craft:

227 The net is an apparatus called dhrarsha. The procedure is analo-
[171] gous to that of Malaga, which renders its description unnecessary; the
[177] Rifians undoubtedly copied this through many trips to the latter place. I have seen it used in Badis and Qal'a Yirish, and the cut is exactly
501 the same. The boat, called agharrabu, is a simple fishing boat; it weighs about a ton; its bow and stern are both well raised up and on a level with each other; it has two benches, a keel and a lateen sail, a mobile rudder; and it is some six meters in length. It is manned by four crew members and the master. On land, a sixth man is needed to put the cable down.

312 571 [613] [596] in the following turn it will take it up at night, and with another order among the irrigators in which the first in one turn will be the last in the next. These two classes of turns, this order of irrigation, is usually set up for the whole duration; when it is begun, the irrigators draw lots with small sticks or twigs, and, at other times, it is set up differently every day. The transfer of 312 571 turns is free, as is the decision of the person to be favored. Turns 425 [432] of water are the object of buying and selling, and are independent of land. A 12-hour turn every week (eight days) comes to some 500 or [805] [435] 600 duros (1939).[124]

312 [821] The hour to begin irrigating is that of the rising or setting of the sun, according to whether the turn itself is diurnal or nocturnal. The repairs depend on their importance and where they are made, the users of the branch in question contributing to these, downstream. The outlets or cuts of water are the responsibility of 312 571 the individual who is irrigating at the time. The duration of turns 805 was regulated by means of natural hours, those of the prayers, and by measurements of the shade and the angle of the same with some object, in other words, a true sun dial.

312 627 628 671 Differences were resolved, as noted, by means of arbitration, valuation or assessment, or indemnification, apart from governmental intervention if this is deemed necessary, as some qanuns express.

312 184 The variations in the treatment of ditches require the conformity of all the ditch-users to be expressed by themselves or their representatives personally, in a meeting convoked to this effect on the sites which are to be the objects of modification, in the system or traditions of irrigation.

usufructed by 'Abdallah bin Ahmad Amhawif and his brothers Awlad 'Ali bin Ahmad[173], because the water of the latter is independent of that which was concluded in the agreement, proceeded to hinder it from those (individuals and social groupings) mentioned in the above pact, alleging that it was prejudicial to the water which was the object of the agreement.

He and the Sayyid Misa'ud bin 'Ali al-Ajdiri, wakil (legal representative) of the people of Ajdir and Imrabdhen, appeared for judgment before the servant of the Sultan (may God protect him[174], the Qa'id Muhammad bin 'Abd al-Salam bin 'Abd al-Sadaq and before the distinguished and good jurisconsults and other (persons), who advised them to work out an arrangement, as is ordered in the Book (Koran) and in the traditional law (Shar'), by whatever exists in it of benefit to both parties and by the fear of what could happen as a grave emanation from the quarrel. By virtue of this, the water cited above as the object of litigation shall be divided into three parts. One-third of it, the amount of which is that of four days of irrigation, is for the aforementioned Shaikh Muhammad and his associates in irrigation; and the other remaining two-thirds, the amount of which is that of eight days of irrigation, shall be channeled into the three irrigation ditches which were the object of the first agreement made, and which emanate from the springs of Bu Harishen.

In conformity with the above, the litigation was considered as finished, as mentioned above.

No trouble remaining between them, by virtue of the above, (as well as) no quarrel, no proof, nothing which could continue the debate

224 All areas, except for the cultivated environs of houses, saints' tombs and cemeteries, could be used for hunting; those most preferred were low hillsides, stubble-fields and threshing-floors. [621] Each jma'th, in reality, came to have its hunting boundaries or habitual hunting areas, with preferential rights. Regarding times for hunting, they had no established limitations or prohibitions. [825] Because of the facility of discovering animals or birds by their [821] tracks, Rifians prefer to hunt when the sun is strongest.....

C) Organization:

224 554 671 [443] The hunt is organized one or two days beforehand, in the suq (as this is the meeting-place of distinct villages....); and here are determined the date, place, dispositive direction and leader (mulu')[183] or major beater, an individual who is always versed in the customary law of hunting.

224 Among points decided upon here is whether the hunting is to be in company (Mor. Ar. shirka, Rifian shirxth or sharxth) or not, which means ultimately if the game collected is for the person who [578] killed it or not. Ordinarily it is agreed to be in company. This tends to avoid multiple incidents and disputes, and it is only necessary to determine whether the hunters divide up the catch or gather in someone's house to eat it. They almost always agree on the division of the catch before coming back to the village. If there is much game, the division is in terms of the number of animals or birds taken; if not, the animals or birds are cut up and the pieces distributed (r-uzi'ath) among the hunters.

224 411 of these, and any Rifian worthy of his salt can knock down a partridge in full flight with noteworthy dexterity, and at a distance of fifteen to twenty-five meters.

(824) The sticks which they use are usually of wild olive wood, in the form of shepherds' crooks, backed by a few turns of copper wiring at each end and the upper third; and this at the same time increases resistence to breakage, facilitates throwing by its greater accuracy.... The net result is that the Rifian is as dangerous, or even more so, to game animals or birds than is the average European hunter with a double-barreled shotgun.

224 At the hour agreed upon, when every participant is provided with his corresponding weapon or dog, they all leave their houses and go toward the hunting site, crying "Haw-haw! Haw-haw!", which is the signal of hunting and reunion.

E) Ownership of Game Caught:[188]

Ownership of game which is caught follows certain rules which are based on a general principle attributing the game first to whoever discovers it; second, to whoever kills it; and finally, to whoever (578) collects it. In different (or individual) cases, disputes may take place, and these and the way they are resolved will be discussed (411) further on. The principal elements of judgment are the range of vision of the hunters, and the range of accuracy of the weapons, some fourteen stick-lengths, or forty feet in a stone's throw.

671 224 692 The customary law of Rifian society minutely anticipates how many cases may arise, and as, furthermore, it is inspired by reality, it is simple and useful, requiring of the judges, first, competence,

671 and, second, diligence, both of which are qualities also needed by
224 judges of The Law[189], who, in order to manipulate their terrible
692 weapon, the pen, need attitudes of repose, and sheltered places where they can keep their books and papers and even hide their faces.

224 Incidents which arise during hunts are examined most often
578 by passing them to the mulu' of the same hunting party. He settles
627 them on the spot, giving his judgment on the matter, and in the
614 event that the question must go up in front of the imgharen, the latter limited themselves to doing their duty and to putting into effect the opinion of the mulu', a natural arbiter.

224 Thus it had to be; and if, for example, there was a hunting
578 incident in the snow, the best possible proof of which was individual
627 tracks or footprints, this required, on the part of the judge, dili-
695 [132] gence in copying or studying before it was rubbed out.

224 The usual sanction, all over the Rif, for hunting incidents
681 is a fine of 25 pesetas.[190]

[128] For the examination of different cases which tend to come up often, we have grouped them in the following categories, which facilitate consultation even though they are somewhat arbitrary.

F) Game:

223 1) A bird knocked down in flight within the range of vision
671 of the hunters belongs to whoever hits it, until, having hit the ground, it flies up again, in which case, and if it is not wounded again, it belongs to whoever catches it.

223 2) If a bird or animal is hit simultaneously by several hunters,
224 it belongs to whoever catches it; and if several people should catch it
671 at once, it is divided among them (Aith 'Ammarth).

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at once, it is divided among them (Aith 'Ammarth). In the Sanhaja Srir, the mulu' sometimes resolves the question of ownership by hefting the sticks of those who are disputing and giving it to the man whose stick weighs most.

3) Animals or birds disputed about without sufficient proof of ownership are taken away from both parties and handed over to the mulu' (Ibuqquyen).

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4) An animal or bird hit both by a shot and by a stick belongs to the man with the stick if it falls less than twenty steps from where the latter threw, and to the man with the gun if the distance is over twenty steps (Aith 'Ammarth).

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5) A bird hit by a shot and caught by another hunter in whose vicinity it falls belongs, if it falls down dead, to the man who fired the shot, and to the other man if it is only wounded and if he pursues it and finishes it off. If there are no witnesses, whoever gets it must say if it fell down alive or not, and an oath to this effect can be demanded of him (Sanhaja Srir).

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6) Any bird or animal which has fallen outside the range of vision of a hunter belongs to whoever finds it if he is going hunting also; and if he is not, it belongs to whoever wounded it (in the same way that in the method of acquiring property by vivification, this case shows a recompense for physical effort, denying rights of recovery to a goatherd or a traveler whom luck might favor instead of the hunter)

[201]

7) A bird or animal sitting in a thicket or in its den belongs to whoever discovers it; and the latter must make his discovery known by raising his stick and crying out "l-'adaw", these both being signs of recovery (Ibuqquyen and Aith Waryaghar).

671 224 [804] If, however, the animal should flee and be killed by another hunter, it (still) belongs to the one who discovered it, although he may not have shot or thrown at it, provided that the distance from the point where it fell to that where it was discovered can be covered by a stone's throw, done either by him himself or by another hunter designated by him, with, furthermore, the choice of either point as that of the stone-throw being open to him (either where the animal fell or where it got up). This is done in order to utilize the slope, if...this distance had not been previously established.

671 223 224 8) An animal or bird flushed up by a hunter is his if he does not pass beyond a distance of forty feet counted from the point at which it was flushed, and even though the shot may have missed it or if it was overtaken by a dog (Sanhaja Srir).

[681] 9) If an animal or bird wounded by one hunting party is finished off and collected by another one, it belongs to the first party, to which it must be returned even though it may already be cooked; and if it has been eaten, the second party must pay the first 25 pesetas as compensation (Sanhaja Srir).

671 223 623 10) Nests belong to whoever discovers them, and in the event that they are saved as bait in order to hunt the mother with a trap or net, the site must be shown to the jma'th, in order to insure priority rights.

G) Dogs:[191]

671 223 224 231 1) Animals or birds picked up by dogs are not for the owner of the dog, but for whoever takes them out of his mouth (Aith 'Ammarth). This is based upon the fact that if the dogs are not trained, they will

671 223 224 231 eat the birds or animals instead of taking them to their masters. However, from another point of view, it is probably not a bad thing to let them taste meat once in their lives, for not everything in their diet must be bones!

[411] 2) If, at the moment it is flushed, an animal or bird is wounded with a gun or stick and then immediately caught by a dog, so that the result of the blow cannot be determined, it is for the hunter and not for the owner of the dog (Ibuqquyen).

[804] 3) Also for the hunter is any animal or bird which, wounded by him, continues to run and is overtaken by a dog within a radius of fourteen stick-lengths (dhigharya or dhigharyin, sing. dhaghrith, "stick"), counted from the site where the animal was wounded, provided that it shows a fracture. If it does not show a fracture or if it passes this radius, it belongs to the owner of the dog or to whoever picks it up (Ibuqquyen and Aith Waryaghar).

4) An animal pursued by a saluki which succeeds in hiding itself in a thicket or burrow belongs to the first man (i.e. the owner of the saluki), even though another hunter may come to get it (Ibuqquyen).

5) An animal or bird pursued by a saluki and brought to earth by a hunter is for the latter if it drops within the aforementioned radius of fourteen dhigharya (Ibuqquyen and Aith Waryaghar).

H) Aid During the Hunt:

671 224 Whoever discovers an animal in hiding can solicit aid in getting it or can get others to help him spontaneously, without losing his property (i.e. the animal) in either case; but he is obliged, if the

224 aid was rendered with firearms, to pay a cartridge, and if rendered
671 with a ferret, to surrender half of the animal taken, for the maintenance of ferrets, based on milk, eggs and bread with olive oil, is costly. The same holds true if he is lent a net; he must pay half of the animals he catches (Aith 'Ammarth).

671 Anyone who, if help is required of him, denies it and
224 deliberately frightens the game away with shouts and gestures, in
689 order to hunt it later on his own, is obliged to pay a fine of 25 pesetas for his selfishness.[192]

671 I) Snow:
224 The tracks of animals (largely hares and rabbits) and the footprints of hunters give rise to the following cases:

1) The animals are for whoever discovers them and follows their tracks from the point where these begin or further; this is thus a recognition of the greatest effort (Aith 'Ammarth).

2) This right may be yielded by the pursuer, for reasons of weariness, etc., to anyone whom he meets on the way; and in case he abandons the search, he loses his rights (Aith 'Ammarth).

671 3) After the den of an animal is discovered, the hunter makes
224 a circle in the snow around it. This circle is a sign of priority
423 rights to the animal within it, and it permits the hunter to follow new tracks even though he may not kill the animal within the burrow.
671 In case another man takes the animal from its den, the claim is
224 examined in front of the mulu' by the first hunter taking oath to
423 having made the circle in order to locate the animal first.
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[681] If through lack of other proof and if afterward it comes to

671 224 423 627 681 be known that one of the parties involved obliged the other one to swear, even knowing that the latter was right, the first party is fined 25 pesetas over and above the value of the animal (Aith Waryaghar).[193]

671 224 4) Animals found on someone's plot of land belong to the man who catches them and not to the owner of the land (Aith 'Ammarth).[194]

J) Nets and Snares:

223 After threshing has been completed in the late summer, threshing floors somewhat distant from the villages are used in order to hunt partridges with nets.[195] The threshing floor is prepared for this purpose, with straw and grains wasted as fodder. It is then surrounded with a semi-circular fence, a sign that it is prepared for birds.

671 223 (685) On a threshing floor, the preferential right to any game caught is that of the owner of the floor. In a floor marked out as indicated above, only the indiviual who prepared it may hunt. Any other person who tries to do so is considered a thief, and the fine he must pay is calculated on the basis of the number of partridges in the net. This right is based upon the patient preparation and expense of fodder, as bait.

223 224 After the den of a rabbit or hare or the nest of a partridge has been discovered, the hunters sprinkle the path to it with the grain residues of threshing in order to gain the animal's confidence; and when they consider it gained, they put the trap hidden between the earth and the remains of the threshed straw.

223 If partridges are being hunted, the net has a truncated conical form. The smaller end is placed in front of the nest and the larger tied to the ground with string or rope. The more the partridge tries to move forward, the more imprisoned it is.

685 671 Theft of nets is generally punished by a fine in accordance with the written qanuns of the tribes.

224 K) Hunting of Jackals (Uhar), Wolves (Ushshan) and Foxes (Dhawardha):[196]

This is effected with an iron trap (dhakhshifth), with various strategems employed because of the cunning of the animals in question. Frequently one of these animals attacks the goats furthest away, and tears them into pieces before the goatherd can arrive. The remains of the goat are tied to a branch, and below them, hidden in the ground, the traps are placed in a circle. They are usually left there for a long time, for if their positions are changed, the animal or animals are apt to become wary. The jackal, after conscientious study and with maximum caution, succeeds most of the time in getting within the circle without harming himself, but the repeated jumps, each time with greater impulse, which he is obliged to make in order to get at the goat, end up with his getting caught in one of the traps (Zarqat).

224 184 825 In the Ibuqquyen, the bait is usually a reed tube full of horse-flies and covered with very rancid butter; this is hidden in the ground, and the traps are placed around it. The wary jackal usually gets inside the circle, attracted by the smell of the butter; but as the cautious animal scratches and bites, he is frightened by the flies, loses his head, and in one of his disorderly leaps, he lands on one of

5: Blanco Izaga G-4,5 (1914-1945) 1975 MX3 Rif MX3
Aith Waryaghar

FOOTNOTES:

000 1--The term used by Blanco is "compenetración".

[128] 2--Blanco's sentence construction is often long and involved; literal translation into English does not generally do it justice, and we have had to take certain liberties.

671 829 609 648 3--In nearly five years in the Rif, we only met three Spaniards (none of whom was a tribal administrator) who spoke Rifian really well; and on countless occasions Rifians told me, "You, an American, have only been here among us for two (or three, or four, etc.) years, and you speak our language very well; the Spaniards have been here for forty years and have never made the effort to understand a word of it!" Statements of this kind show how clearly the two communities remained apart from one another; and they also show, more obliquely, how deficient the linguistic and sociological training of Spanish officers in Morocco was, particularly in comparison with their French counterparts. In the French Zone, it was virtually a sine qua non that an officer who was scheduled to administer a Berber tribe be able to speak the language fluently. In the Spanish Zone, this was not so; and even the number of administrators who could speak Moroccan Arabic properly was small.

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000 [177] 4--Only in a manner of speaking. Resistance to cultural change may seem to be outstanding in the Rif; but if one should compare the Rif with, for example, the Central Atlas at the present day, the former immediately emerges as far the more "acculturated" of the two areas. The reasons for this, furthermore, are not far to seek: greater accessibility, the Arabization tactics of 'Abd al-Krim, and longer contact with Europeans. Rifian hardheadedness and distrust of outsiders are perhaps unique even in Morocco, however, and the result on the level of acceptance or rejection of outside ways has thus been to a considerable extent a matter of the Rifians' own choice; and this is probably what Blanco means.

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It is hardly necessary to point out that Rifians do not constitute a "race".

[114] 5--This is a Spanish attempt to penetrate a Berber mode of thought behind an Arabic turn of phrase; and it is rendered all the more difficult by the fact that Blanco knew neither language well, if at all.

6--This seems a Rousseau-esque yearning for, one might say, the jural "simplicity" of the Rif as opposed to the "institutional and legal complexity" of Europe!

[114] 7--Blanco wrongly spells this word islifen.

8--The injection of both patriotism (and/or chauvinism) and value judgments into a work of this sort is something which neither Spanish nor French tribal administrators in Morocco seemed to be able to get away from. More suspect, however, is perhaps Blanco's wish that Rifian law be treated by qualified professional jurists--José María Paniagua y Santos (op. cit., 1948 and 1950) did just this, and the results were a complete fiasco; at least in terms of usefulness of the materials to anthropologists.

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000 44--Which is unwritten in any case.

45--The Aith 'Abdallah are at once a clan and a "fifth" of the Aith Waryaghar.

46--In Rifian, Dhara n Tihrariyin, "the spring of the pure women(?)". The Tuesday Market once located there has not been functioning since the establishment of the Spanish protectorate, or earlier. The people of Aith 'Abdallah at present share a market, held on Mondays, with those of Aith Hadhifa; this market is located on the border of the two clan territories.

[614] 47--Sidi 'Amran is buried in the jma'th of Aith S'aid, in the subclan territory of Aith 'Aru Musa, one of two subclans of Aith 'Abdallah (the other being Aith Tmajurth).

[114] 48--Presumably with eleven of his agnates as cojurors, for twelve must swear in cases of suspected homicide; but there is no mention of this in the text and Blanco, whose knowledge of collective oaths in the Rif was sketchy, does not comment upon it.

[114] 49--Blanco's notions of Rifian segmentary lineage organization are somewhat deficient; for although the notion of a confederation of tribes might once have existed in the Rif (vide the liffs of Ghumara and Sinhaja), but during the "Republik" as described both by Blanco and myself, it most emphatically did not exist, nor does it exist today.

50--"Autonomous" would perhaps be a better word in this connection, for any segmentary system presupposes an interdependence of its component segments, upward, downward and laterally; and within the framework of such a system, maintained as it is by the principles of balance, oscillation and opposition, there is always some (and often very considerable) latitude for a (virtually or largely) autonomous existence on the part of individual segments, irrespective of the segmental level under consideration.

[619] 51--Because the Aith Waryaghar, in point of population, are the biggest tribe by far in the entire Rif (with the Igzinnayen following, at some distance), its clans may be functionally equated, in certain respects but not in others, with whole tribes elsewhere.

671 614 52--The Aith 'Adhiya are one of two subclans of the clan of the Aith Bu 'Ayyash (the other being "True" Aith Bu 'Ayyash), of the tribe of Aith Waryaghar. We have referred to it as Bani 'Adhiya rather than Aith 'Adhiya in the text itself, as this is how it appears in Arabic.

614 162 Although the Aith 'Adhiya are strictly speaking a subclan rather than a clan proper, as the Aith 'Abdallah are (see Chap. VI), they are nonetheless about the same size as the latter in point of population; and the whole clan of the Aith Bu 'Ayyash, with both subclans considered, is the biggest in the tribe, and by a rather wide margin (population 22,000 in 1960). This fact helps explain two things: 1) why the Aith 'Adhiya and the "True" Aith Bu 'Ayyash are in opposite liffs, and 2) why the qanun of the subclan of the Aith 'Adhiya deals with almost exactly the same matters as that of the clan of the Aith 'Abdallah. Aith 'Adhiya and Aith Bu 'Ayyash form one "fifth".

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000 53--This is probably Aith Tizi, forming a part of the larger jma'th of Ighmiren, with Aith Fars.

54--Whether all the Aith 'Adhiya jointly sacrificed two bulls, or whether one each was sacrificed by the members of each liff is not indicated.

55--The market in question is the Monday Market of Aith Bu 'Ayyash.

[671] 56--In both this qanun and that of the Aith 'Abdallah we see how the fine for murder committed in the market is double that for murder elsewhere. Both qanuns also imply that not only must the fine be paid but that the murderer's house and crops will be burned as well. All informants from all over the Central Rif, however, said time and again that if the fine is paid, there is no houseburning. The root of the [735] discrepancy seems therefore to be an implicit assumption that the average murderer is too poor to pay the fine, which is in any event prohibitively high.

57--In some respects one can see what Blanco means here, but such a statement, particularly regarding the "superficiality" of Rifian Islam, is one which the Rifians themselves would hotly and vehemently deny. In their own eyes, they are extremely good Muslims!

[262] 58--Rifians tend to eat meat, as a rule, only on one day of the week: when they buy and bring it home from the market.

[114] [682] 59--Blanco here confuses the ddiyith, or blood money, to be paid to the victim's agnates, with the rhaqq, or fine for murder, to be paid (both payments being made by the murderer and his own agnates) to the council-members.

[682] 60--Blanco's point about 1000 duros being the fine for murder under normal circumstances (i.e. outside the market) and 2000 for murder inside it is very well taken; and, as he implies, these sums are indeed the norm all over the Rif. But once again, he confuses fines with blood-money, and they are entirely different.

61--Again, read rhaqq or fine.

62--Again, read rhaqq or fine.

[114] 63--This is an interestingly expressed idea, but the linkage with nomadism seems questionable.

[614] 64--As already indicated, the Aith Khattab include the two Waryaghar clans of the Aith Yusif w 'Ari and Aith 'Ari; and in this sense they might be considered a "super-clan", particularly if, as some have it (though this is nowhere indicated in the text of the qanun), they embrace the Aith 'Abdallah as well. In the same way, Aith Bu 'Ayyash, if it embraces, on the topmost level, the two clans of the Aith Bu 'Ayyash and Aith Hadhifa, may also be regarded as a "super-clan" of the same order of segmentation. However, the group in question is referred to as Bani Khattab, not Aith Khattab, in the text of the qanun.

65--As indicated, this qanun is valid only for the coastal Aith Khattab, those of both Aith Yusif w 'Ari and Aith 'Ari who live in and around the Plain of Alhucemas, bordering the Mediterranean.

224 619 689 114 182--According to informants in the Jbil of the Aith Waryaghar, this was not, and is not so. Hunting is neither obligatory, nor are there fixed days for it; people hunt entirely when they wish to do so, although nobody would think of doing so on Wednesday (market day) or Friday.

224 671 [114] [178] We wonder, too, if the Rifian hunting qanuns are in fact as detailed and as complex as Blanco would have us believe. Hunting is certainly less common now than it was, for instance, during the "Ripublik", and possibly the general knowledge of many of the fine points which Blanco has recorded has died in the interim. It is also possible that these same fine points may be in fact an indication of the relative lack of game in the Rif; that because the human population is relatively high and the animal population relatively low, provision must be made to establish priority rights of particular individuals to game, under any circumstances. Hunting regulations, as Blanco describes them for the Rif, are far more elaborate than they appear to be in the Central Atlas, where game (and large game, such as Barbary sheep, panthers and boar) is plentiful and where hunting is generally done with a bu shfar, the flintlock gun. There, the general rule of thumb is that anyone who hears a shot fired comes running, as any person present at a kill has the right to share the meat with the hunter (i.e. if the animal in question is not Koranically tabooed). In the Rif, game is small (jackals and boar are the largest animals, and both are getting progressively rarer) and not overly numerous, and people are many; hence the elaboration of these hunting qanuns. (Boar are of course not eaten, given the Muslim taboo on pig.)

000 183--This word we have been unable to find in the Jbil of the Aith Waryaghar, in which area hunters, collectively, are called ingmarn (sing. angmar), and where no one can really be termed a "hunt leader".

184--This term, as frequently shouted during a hunt as haw-haw-haw!, the hunting call proper, means "Here it is!" or "There it goes!" and is in fact the Rifian classificatory cousin to the English or Virginian fox-hunter's "Tally-Ho!"

[114] 185--Given mistakenly by Blanco as Aith 'Amar u Yahya.

224 628 613 614 186--In several communities of the clan of the Aith Hadhifa there are lineages of the Upper Imrabdhen (Rashkra, Zawith n Sidi 'Abd r-Qadar and Kammun), while one community (Dhamarkat) contains Lower Imrabdhen lineages.

However, the disposition of these two hunting bands does not appear to coincide with that of the two subclans of the Aith Hadhifa; for while in the first band, Ihadduthen, Mishkur and most of Bihban belong to the subclan of the Aith Bu Jdad (Aith Bujdat), Thizimmurin and Iharunen belong to that of the Iraqraqen; and while, in the second band, Aith 'Amar u S'aid and Bashkra both belong to Iraqraqen, the Imrabdhen are of course intrusive. It is, thus, far more likely and, indeed, a far more logical assumption, that the hunting-band organization described by Blanco follows territorial lines rather than purely segmentary ones; and proof of this can be ascertained from a glance at Blanco's tribal map of Aith Waryaghar in the appendix. A

A, [No appendix is given--Analyst]
A

584 depending on the hour, return to their respective homes or stay
583 overnight as guest of the bride's father.

584 Once the financial arrangement has been settled, the rep-
583 resentatives of both families go to the religious judge (qadi)
692 in Alhucemas or Targuist and present him with the list of obli-
gations the groom's family has accepted. The young couple are
also supposed to attend this meeting, and in the urban centers
it is obligatory. However, judges who serve tribal areas are
rather relaxed about such attendance and are satisfied if the
fathers are in agreement. It is a rule of thumb that judges
● [671] who serve rural Berber areas allow customary procedures to pre-
vail over civil law if the matter does not infringe upon the
security of the state.

584 At this point the groom's family begins to collect the
583 necessary goods for the wedding celebration. This process may
369 take some time, and over a year may pass between the initial
184 agreement and the completion of the stipulated requirements
of the groom. This is, however, quite rare and seems more
584 associated with Berbers living in the city. Among the fellah
585 the marriage has been contracted for good reason and it is
thought best to consummate it as rapidly as possible. Often
the marriage ceremony takes place less than a month after the
meeting to determine the expenses.

585 When all the money and goods have been collected, both
583 parties meet with the qadi again, two or three days before the
692 wedding ceremony. The qadi checks off all the items to make sure

annual income may be claimed. Informants agreed that a figure of 5% of annual income might not be an inaccurate sum for a member to donate to his zariwya.

Aside from these rather special claims on one's sum of wealth are the regular demands made by one's being a member of the Islamic community. Perhaps the most difficult of these obligations for the Riffian is the hadj or pilgrimage to Hijaz, Mecca, the birthplace of Mohammed, and to Medina where he died. The hadj itself takes place between the seventh and the thirteenth of the twelfth month of the Muslim calendar, the Dhu 'l-Hijja. While in former days men traveled in caravans or by boat, the most popular form of locomotion today is Air Maroc which offers special rates during the period of the pilgrimage. Although the number of Riffians making the trip is, in any one year, not proportionately large, it is a rather significant group. The investment is large, ranging from 3,000 to 6,000 dirhams, depending on the means of transportation and the time spent in getting there and back. If one has a family, which is generally the case, one must (by law) leave behind enough money to provide for their expenses while the pilgrim is away. Only the older, wealthier (and as a consequence most respected) Berbers can become al-Hadj, the honorific title bestowed on those who have completed the journey to Mecca. The trip is not, however, completely voluntary. If a man is prominent and in the minds of the populace of the community well-off, there is a good deal of pressure placed on him, in the form of ridicule, gossip and general public disapproval, if he begs off the pilgrimage.

7: Mikesell K-4,5 (1955-1957) 1961 MX3 Rif MX3

a tower used as a lookout and blockhouse.[9] Conflict was most serious in the Rif, where it was necessary to establish a system of women's markets so that the members of feuding cantons or tribes could carry on a rudimentary trade. Another indication of the varying degrees of dissidence is the scale of fines imposed by customary law. The fine imposed for murder by the Aith Wariyaghar was four times as large as the fine for the same crime among the more pacific Sanhajan tribes.[10] In the laws of the Aith Seddath there is no mention of house-burning, a frequent occurrence in the Rif.

In the days before the European occupation the division between government and dissidence coincided with a division between authoritarian order and representative councils. This division might be described also as a contrast between Arab and Berber systems of government. The Berber system was based upon superimposed councils. The smallest was the council of a village or a number of scattered farmsteads. The second council, called the "council of the great," had jurisdiction over a canton. At least one and sometimes all members of the second council participated in the deliberations of a tribal council. The system was democratic, with rotation of authority; thus no one could gain excessive power. The Arab system was and is quite different, for authority rests with individuals, from the *qaid* who rules the tribe to the *shaikh* or *muqaddam* who rules the village or hamlet.

Of the many ceremonies that influence an individual's life, marriage is by far the most important. Here again there are marked differences from one area to another. In the Rif the wedding celebration lasts seven days; on the first four days, private feasts are held for the families involved; on the last three days, guests are invited to the feasts. In Jbala, Ghmara, and most of Sanhaja as-Srair the wedding celebration lasts only three nights. Other differences appear in the entertainment offered to the guests and the complicated rules that govern the behavior of the bride and groom.[11]

The other crises in the life of an individual—naming, the first haircut, and circumcision—vary correspondingly, as do the procedures related to death and burial. When a corpse is ready for burial in the Rif, it is carried on the door of the local mosque, and virtually the whole community turns out for the procession and funeral. In the Arabized sector of northern Morocco the body is usually carried by paid pallbearers, and only the immediate family may attend the burial. Among the Aith Bu Yihyi and Ulad Stut it is standard practice to carry the dead to the burial place on the back of a donkey or mule.[12]

The number of material traits that can be used as a basis for cultural differentiation is almost unlimited. Containers of skin and iron in Garet contrast with pottery in the Rif, and wooden vessels in Sanhaja as-Srair. Even within the Rif one may distinguish the handmade pottery in Igzinnayen, Aith Ammarth,

[9] Most of the towers were removed in 1922 by order of Abd al-Krim. D. M. Hart, "An Ethnographic Survey of the Riffian Tribe of Aith Wuryaghil," *Tamuda*, Revista de Investigaciones Marroquíes, 2 (1954), 38.

[10] For further information on customary law in the Rif, see E. Blanco Izaga, *El Rif: la ley rifeña* (Ceuta: Imprenta Imperio, 1939), pp. 71–75.

[11] Edward Westermarck, *Marriage Ceremonies in Morocco* (London: Macmillan and Co., Ltd., 1914).

[12] C. S. Coon, "Tribes of the Rif," *Harvard African Studies*, 9 (1931), 143–145.

[TEXT CONTINUED ON PAGE 9 1

621 /240 cont./
628 reals; 5,000 if it only wounded him; if the bullet missed its
613 goal, 2,500. The marksman, however, fortunate or awkward,
726 perished the next day, struck perhaps by a child hidden with a
[435] gun in a thicket of lentiscus.

It is understandable that under these conditions the notion of
613 "khoms" is often obscure; the only group that can exist then is
619 the family, around which assemble by bonds of adoption and marriage the weakest groups and the outsiders so as to form the "tarfiq."

613 Discords sometimes become so violent that material life
628 frequently stops; only the women then dare to go out into the fields; the men come to pray at the mosque without abandoning
613 their guns. In these circumstances, the family heads of the
628 whole country gather together in order to decide on a "ribat,"
675 which is respected for several months. This name is given to a solemn agreement that binds all the members of the neighboring tribes to repress, by means of very high fines, murders, rapes, large thefts, aggressions at the markets or on the roads leading to
[681] them. The sums paid by the guilty, which can climb to several thousand douros, are divided among the contracting tribes. The "amghars," heads of the most powerful families, have only the small personal part that goes to them just as to mere individuals.

628 Among the less turbulent tribes of the Rif, as at Targist, at
184 Zerqet, among the Beni Gmil, private wars have not reached as
184 great a development since the inhabitants still succeed in living
621 grouped in hamlets. The "mouda^{c}" or subfractions and even the
632 "khoms" sometimes summon all the warriors in order to deliber-
621 ate common affairs. This meeting, to which each one comes
613 armed, takes the name "agrao" as in the Haut-Atlas /High Atlas/ and the Moyen-Atlas /Middle Atlas/. Sometimes the chiefs of
[681] each of the important families put at the head of the khoms an
[671] amghar whose role is to see to the application of the customary law, to have the fines, or "insaf," paid, with which crimes are punished according to rules known by all, but not written. Like
[652] the moqaddem in the western Atlas, this amghar collects one third of the "insaf"; the other two parts go to the tribe.